



High Rise Sprinkler Retrofit... or Else!

by Christopher J. Thornton, Esq.

The opt-out provisions for high-rise condominium and cooperative buildings subject to the sprinkler retrofit requirements of the Florida Fire Prevention Code were addressed by the legislature this year in SB 1196, recently adopted as Chapter 2010-174, Laws of Florida, effective on July 1, 2010. This article discusses the changes in the sprinkler opt-out law.

Underlying Sprinkler Retrofit Requirement

The requirements of the Florida Fire Prevention Code, Section 31.3.5.12 of NFPA 101, which has been on the books since 1998 and effective since 2002, contains protection requirements for existing¹, high-rise² apartment buildings³ as follows:

31.3.5.12 All high-rise buildings shall be protected throughout by 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 there under which may supersede these rules.

- 31.3.5.12.1** An automatic sprinkler system shall not be required where every dwelling unit has exterior exit access in accordance with 7.5.3.
- 31.3.5.12.2** An automatic sprinkler system shall not be required in buildings having an approved, engineered life safety system in accordance with 31.3.5.12.3.
- 31.3.5.12.3** Where required by 31.3.5.12.2, an engineered life safety system shall be developed by a registered professional engineer experienced in fire and life safety system design shall be approved by the authority having jurisdiction and shall include any or all of the following:
 1. Partial automatic sprinkler protection
 2. Smoke detection systems
 3. Smoke control systems
 4. Compartmentation
 5. Other approved systems

As illustrated above, the underlying fire code requirement for existing high-rise apartment buildings is that they must be protected by an automatic sprinkler system or an engineered life safety system (ELSS) by the deadline of December 31, 2014, unless this requirement is superseded by some other statute or rule.

Former Fire Sprinkler Opt Out

In 2003, the Florida Condominium Act was amended to allow high-rise condominiums to “opt out” of the fire sprinkler retrofit requirements. The law provided that a condominium was not obligated to retrofit the common elements or units with a fire sprinkler system or an ELSS in a building that has received a certificate of occupancy if the unit owners vote to opt out by a vote of two-thirds of all voting interests. However, the opt-out vote did not allow the condominium to forego fire sprinkler system retrofitting of certain “common areas” in a high-rise building. In addition, the law provided that the local authority having jurisdiction could not require retrofitting with fire sprinkler systems before the end of 2014. The opt-out law included special voting, reporting, notice, and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Legislative efforts to extend the retrofit deadline were vetoed in 2006 by Governor Bush and in 2009 by Governor Crist.

New Fire Sprinkler Opt Out under SB 1196

The sprinkler opt-out law was amended by Senate Bill 1196 this past session. The new version of the opt-out law made some notable changes, including:

- Extends the deadline for sprinkler retrofitting from 2014 to 2019, but includes a new requirement that by December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting, must initiate an application for a building permit for the required

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installation, demonstrating that the association will become compliant by December 31, 2019.

- Reduces the requisite vote for approving the opt out from two-thirds to a majority of the voting interests.
- Removes the ability of the association to provide electronic notice of the meeting held to opt out of retrofitting requirements.
- Includes a new requirement that if there has been a previous vote to forego retrofitting, a vote to require retrofitting may be called for by a petition signed by 10 percent of the voting interests. Such a re-vote may take place once every three years.

Engineered Life Safety System

One additional significant change to the opt-out law has created some uncertainty regarding the effect of the opt-out vote. Under the former version of the opt-out law, it was clear that upon the requisite vote of the members, the association was not obligated to retrofit "with a fire sprinkler system or other engineered life safety system." This language from the old opt-out law is consistent with the underlying requirement of the fire code, which allows compliance by installing "an approved, supervised automatic sprinkler system or an engineered life safety system." Under the new version of the law, the association is not obligated to retrofit "with a fire sprinkler system" if the unit owners vote to forego retrofitting, but all references to the engineered life safety system (ELSS) have been removed from the statute. Because the underlying requirement is to install either the sprinklers or the ELSS, and the new version of the opt-out law only appears to allow the association to

forego installation of the sprinkler by conducting the opt-out vote, it is possible that the law could be interpreted to require the installation of the ELSS even if the association opts out of sprinkler retrofitting. In addition, if an ELSS is required after an opt-out vote, it is not perfectly clear from the new law whether the ELSS can be required to include partial sprinklering.

With respect to sprinkler retrofitting for high-rise condominium buildings, one option would be to comply with the underlying law by fully sprinklering the building or installing an ELSS, without the necessity of conducting an opt-out vote. Another option would be to conduct the opt-out vote, in which case it would be advisable to determine whether the ELSS will be required, and

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what that will entail. Some associations have decided to take a “wait-and-see” approach to determine how the ELSS issue will be interpreted by local fire officials and to see whether the law might change again. In order to determine which is the best option for your particular association and whether you should conduct the opt-out vote, it is recommended that you consult with your community association counsel and engage an engineer experienced in life safety to weigh the pros and cons and evaluate the costs and relative safety of the options.

Christopher J. Thornton, J.D., is an associate in the Naples office of Becker & Poliakoff, P.A., where he practices in the areas of community association law, land use, and zoning. ■

¹ Section 3.3.28.5 of NFPA 101 (2006) defines an “existing building” as a building erected or officially authorized prior to the effective date of the adoption of the current edition of the Code by the agency or jurisdiction.

² Section 3.3.28.7 of NFPA 101 (2006) defines a “high rise building” as a building where the floor of an occupiable story is greater than 75 ft (23m) above the lowest level of fire department vehicle access.

³ Section 3.3.28.3 of NFPA 101 (2006) defines “apartment building” as a building or portion thereof containing three or more dwelling units with independent cooking and bathroom facilities.

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