



The Florida Fire Prevention Code (“FFPC”) provides that all Florida condominiums that meet the definition of a “high-rise building” must be protected by either (1) a complete automatic fire sprinkler system or (2) an Engineered Life Safety System (ELSS) by the deadline of December 31, 2019. The FFPC, as set forth below, provides the definition of “high-rise building,” and lists examples of systems that may qualify as an acceptable ELSS pursuant to the code.

FLORIDA FIRE PREVENTION CODE

The requirements of the Florida Fire Prevention Code, Section 31.3.5.11 of NFPA 101, 2012 edition, contains protection requirements for existing, high-rise apartment buildings as follows:

31.3.5.11 High-Rise Building Sprinklers.

“High-rise building” means a building where the floor of an occupiable story is greater than 75 ft. (23 m) above the lowest level of fire department vehicle access.

31.3.5.11.1 High-Rise Building Sprinklers. All high-rise buildings, other than those meeting 31.3.5.11.1 or 31.3.5.11.2, shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 31.3.5.3, not later than December 31, 2019.

31.3.5.11.2 An automatic sprinkler system shall not be required where every dwelling unit has exterior exit access in accordance with 7.5.3.

31.3.5.11.3* An automatic sprinkler system shall not be required in buildings having an approved, Engineered Life Safety System (ELSS) in accordance with 31.3.5.11.4.

A.31.3.5.11.3 This system might consist of a combination of any or all of the following systems:

- (1) Partial automatic sprinkler protection
- (2) Smoke detection alarms
- (3) Smoke control
- (4) Compartmentation or other approved systems, or both

31.3.5.11.4 Where required by 31.3.5.11.3, 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

31.3.5.11.4.1 When used to satisfy the requirements of 31.3.5.12.3, the term “Engineered Life Safety System” shall only apply as an alternative to complete automatic fire sprinkler protection in existing high-rise buildings.

Notwithstanding the requirements of the Florida Fire Prevention Code, an exception has been created by the Florida Condominium Act, allowing condominiums to avoid having to install a complete automatic fire sprinkler system. Florida Statute 718, as stated below, provides Florida condominiums with the ability to “opt-out” where a majority of the total voting interest of the condominium votes in favor of doing so at a duly called and noticed meeting of the membership. If a Florida Condominium wishes to “opt-out,” it must do so by December 31, 2016. However, even if a condominium association successfully opts-out, the association may still be required to install an ELSS, or take other safety measures as required by the municipality where the condominium is located.

FLORIDA STATUTE 718.112(2)(I):

(I) Certificate of compliance.—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 must be included. 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.

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 is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner

written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

In conclusion, the Florida Fire Prevention Code provides that all Florida condominiums that meet the definition of a "high-rise building" must be protected by either (1) a complete automatic fire sprinkler system or (2) an Engineered Life Safety System (ELSS) by the deadline of December 31, 2019.

However, the Florida Condominium Act provides Florida condominiums with the ability to "opt-out" of the obligation to install a complete automatic fire sprinkler system where a majority of the total voting interests of the condominium vote in favor of doing so, either in person or by proxy, at a duly called and noticed meeting of the unit owners. Condominiums wishing to take advantage of the "opt-out" provision must vote to do so by December 31, 2016. It is important to note that, even if a condominium has successfully voted to "opt-out" of installing a complete automatic fire sprinkler system, the condominium may still be required by the municipality to install an ELSS, or some other form of fire prevention or fire safety mechanism. For that reason, regardless of whether a condominium has chosen to "opt-out" or not, the Association should consult with a professional engineer who is familiar with the local and municipal codes and requirements, in order to determine how best to move forward.

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