An Update on Fire Sprinkler Retrofitting

By Partner, Brian Hess

The Florida Department of Business and Professional Regulation (DBPR) has just issued a **"clarification" of its previous statement, which now may mean that your condominium association may not have to install, or vote to waive the installation of, fire sprinkler systems after all**. Of course, there are political actions and implications that are involved with this issue. While our interpretation of the relevant statutes did not change, and has not ever changed, Clayton & McCulloh must now advise its clients to take this new "clarification" into account with regard to this very fluid issue. On Friday, July 8, 2016, the *Palm Beach Post* published an article, quoting Travis Keels, deputy director of communications for the DBPR, stating: "generally speaking, the fire sprinkler requirement applies to all residential condominiums." The DBPR has recently issued an undated statement on its website, stating the following: "The Florida Condominium Act and the Florida Cooperative Act provide guidance on the timeline and procedure for associations governed by those Acts to vote to forego retrofitting of a fire sprinkler system. Neither the Florida Condominium Act nor the Florida Cooperative Act mandate that associations install fire sprinklers; rather, these Acts provide associations, until December 31, 2016, with the opportunity to vote to forego retrofitting."

While this statement may not be considered by some to be a clarification, Clayton & McCulloh is now more comfortable with advising our clients based on the same advice we were giving to our clients prior to the July 8, 2016, publication and prior to any communications you have received from this firm between early July 2016, and this date. In summary, if Florida Statute 718 does not require retrofitting, then, unless another law, local code or ordinance does require retrofitting, Florida Statute 718 is not applicable, except as to provide an "opt-out" if the association is separately required (by another law, local code or ordinance) to retrofit.

The statutory provisions dealing with the procedures for waiving a fire sprinkler system retrofitting are as set forth in Florida Statute 718.112(2)(l).

When initially passed into law in 2003, retrofitting was only required for condominium buildings more than 75 feet in height. The law was changed later to, among other things, remove such requirement, leaving confusion as to its applicability. The question as to whether a condominium association would be required to retrofit the condominium buildings with a fire sprinkler/life safety system was dependent on local codes and ordinances in place in the city and/or county where the condominium is located. That would, to some extent, depend on the exact size and structure of the association's buildings. As such, it is generally recommended that the association retain a consulting engineer, consulting general contractor, or a fire safety systems expert that can advise as to the obligation to install such a system under city/county or other codes or ordinances. However, it has been our experience that under the codes and ordinances in place in most jurisdictions, generally only associations with condominium buildings exceeding 75 feet in height would be required to retrofit/install such system.

In other words, if your association is questioning whether your buildings must be retrofitted, we advise that the association contact its fire marshal, retain a consulting engineer, consulting general contractor, or a fire safety systems expert that can advise as to the obligation to install such a system under city/county or other codes or ordinances. But for the vast majority of buildings that are 75 feet or less in height, they will not be required to retrofit. If you believe that your association will be required to retrofit, and the association has not yet considered whether to waive the retrofitting or proceed with the retrofit, please contact us for additional details as to that process.

We know this has been a confusing issue for many associations, but it has also been an educational one. It's quite clear that often even those agencies charged with enforcement of our laws, statutes, and ordinances may not clearly communicate their interpretations and understandings. Additionally, cryptic statements made by a state agency can create a complete mess. Clayton & McCulloh's interpretation of this law has not changed, but our advice as to our clients did change in response to the July 8, 2016, publication. Certainly, the statutory deadline of December 31, 2016, placed added urgency on our advice to our clients and necessitated a swift reaction based on the published statement. Our advice, as stated above, is now based on our previous interpretation of the statute, as we had advised prior to the most recent DBPR statements.

Have a question? Please do not hesitate to contact Clayton & McCulloh, a Firm that embraces Community.