

RETROFITTING IN CONDOMINIUMS

... THE CLOCK IS TICKING
by kbrlegal



Recent changes to Florida Statutes have included provisions in the Fire Safety Code that requires condominiums to undertake installation and/or changes to certain fire/safety related devices within the condominiums. Due to the significant expense typically required to retrofit a condominium in the manner contemplated in the Fire Safety Code, and in recognition of the significant burden this would place on the unit owners, changes to the Condominium Act (Chapter 718 of Florida Statutes) allows an association to vote to "opt-out" of the requirement to retrofit the fire sprinkler system that services the condominium, including the common elements, association property, and the units.

Specifically, Section 718.112(2)(l) F.S., allows an association to vote to forego the retrofitting of the fire sprinkler system for the common elements, association property, and units, upon the approval of a majority of the entire membership. The vote may be undertaken at a duly-noticed membership meeting, or via the written consent process in lieu of having a membership meeting.

If a membership meeting is held, the Statute requires 14-day advance written notice be sent to the entire membership via mail or hand-delivery. The vote to forego the retrofit is considered effective once a Certificate is recorded in the Public Records of the County where the condominium is located, attesting to the vote. Additionally, if the vote is undertaken, the association must send written notice to the entire membership of such decision within 30 days of the vote (an Affidavit of Mailing must be executed and kept in the Official Records of the association demonstrating that this notice of the results of the vote was delivered to the membership). Finally, if (and when) the retrofit "opt-out" vote is undertaken, the Statute requires the association to report the results of the vote to the Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division").

In the event that an association does not obtain the required majority approval to forego the retrofitting (or otherwise chooses to not present such issue to the membership), the association must submit a building permit application with the applicable local governmental authorities on or before December 31, 2016 regarding the intent to comply with the applicable fire/life safety codes. The completion of any such retrofit is not required until December 31, 2019 under the current provisions of the Condominium Act. Consultation with a licensed contractor, as well as your local building/fire department officials, is recommended regarding the specific requirements of the retrofit if, and when, such course of action is undertaken.

If an association obtains a valid vote to forego retrofitting as described herein, the membership also has the ability to vote to rescind the earlier "opt-out" vote, and to proceed with the retrofit of the fire sprinkler system if a Special Meeting of the Membership is called by a petition of 10% of the membership, and a majority of

the membership again votes affirmatively, this time in favor of rescinding the prior decision. This Special Meeting/Vote may only be called once every 3 years.

As the deadline for qualifying for the opting out of the otherwise mandatory retrofitting of condominiums is approaching, boards of directors, as well as members within condominium associations for condominiums that have not yet taken this action should be discussing the options that are available and planning accordingly. For any questions that may arise, it is also recommended that the board consult with the association attorney throughout the process.

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