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**SENT VIA EMAIL TRANSMISSION TO [trina@surfcoastrealty.com](mailto:trina@surfcoastrealty.com)**

Ocean Club South Management, Inc.  
C/o Surfcoast Realty, Inc.  
366 Flagler Avenue  
New Smyrna Beach, FL 32169

**RE: Written Consent to Reduce Fire Sprinkler Retrofitting Obligations**

Dear Board of Directors:

As you know the 2010 amendments that were made to Section 718.112(2)(l), Fla. Stat. apply to all Florida condominiums. At first glance it would seem that every single Florida condominium might have the obligation to retrofit for fire sprinkler systems. However, this is not necessarily true. Under the Florida Life Safety Code adopted pursuant to Chapter 633, Fla Stat. **high-rise residential structures (and possibly even some medium or low rise residential structures - depending on who you listen to) are required to install fire sprinklers and engineered life safety systems.** The only way to determine with any certainty whether your facility is subject to the requirement of retrofitting for fire sprinklers is to consult an engineer. This can be problematic if you can not hold the engineer liable for any incorrect information the engineer may provide and typically most engineers - in their engagement contracts - substantially limit their potential exposure for professional liability, either to fees paid or to a limited amount of liability insurance. The only certain way to obtain immunity from the need to retrofit your units and common elements with fire sprinkler systems is by taking a vote and getting approval of a majority of the voting interests to waive the retrofitting requirement for fire sprinklers, as permitted by the statute. Note that this does not relieve you of having to install an engineered life safety system if that is required by the fire marshal. Although such a system may be more or less expensive, it may be far more aesthetically acceptable.

For your information, I reproduce the statutory provisions of Section 718.112(2)(l), Fla. Stat., for your review:

(l) 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. (Emphasis supplied)

It is probably better for you to use the written consent referred to in the statute. Section 617.0701(4), Fla. Stat., a copy of which I enclose herewith, deals with consent to corporate actions without meetings. Note that you have a window of ninety (90) days from the date you receive the first Consent to the time that you must receive at least the requisite number of consents.

Accordingly, I enclose herewith the following documents:

1. A proposed letter and Written Consent Form.
2. A proposed letter to your owners from the Board of Directors explaining what they are doing. Feel free to change this letter, though you may want to keep the instructions portion.
3. A voting certificate.

Pursuant to Paragraph 4 of your Declaration, a voting certificate is required for units owned by more than one person or a corporation. If they have not already done so, the co-owners of each unit should decide among themselves who is to vote on behalf of all co-owners in the unit, and complete the enclosed Voting Certificate, returning it to the Association. This Certificate must be signed by all of the co-owners designating the voting member for that unit and filed with the Secretary of the Association. If the vote is cast by someone other than the designated voting member (unless signed by all voting members) you are not to count the vote.

If you are successful in getting a majority vote, you should inform me of this immediately, so I can prepare the requisite notice for recording and the form to be completed and provided to the Division. I will also prepare a form disclosure that you can send to your members, for provision to prospective purchasers and lessees, as required by Section 718.112(2)(l), Fla. Stat.

If you have any questions concerning any of the enclosed documents, please do not hesitate to contact me.

Sincerely,



JAMES E. OLSEN,  
For the Firm

PLW/JEO/sfa  
Enclosures

SECTION 617.0701(4), FLA. STAT.

\* \* \*

(4) Unless otherwise provided in the articles of incorporation, action required or permitted by this chapter to be taken at an annual or special meeting of members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted.

(a) To be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the corporation to its principal office in this state, its principal place of business, the corporate secretary, or another officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded. Written consent to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within 90 days after the date of the earliest dated consent and is delivered in the manner required by this section.

(b) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the corporation at its principal office in this state or its principal place of business, or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

(c) Within 30 days after obtaining authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(e) If the action to which the members consent is such as would have required the filing of articles or a certificate under any other section of this chapter if such action had been voted on by members at a meeting, the articles or certificate filed under such other section must state that written consent has been given in accordance with this section.

(f) Whenever action is taken pursuant to this section, the written consent of the members consenting to such action or the written reports of inspectors appointed to tabulate such consents must be filed with the minutes of member proceedings.

**CERTIFICATE OF APPOINTMENT  
OF VOTING REPRESENTATIVE**

**TO THE SECRETARY OF OCEAN CLUB SOUTH MANAGEMENT, INC. (THE "ASSOCIATION"):**

THIS IS TO CERTIFY that the undersigned, constituting all of the record owners of Unit (Apartment) No. \_\_\_\_ have designated \_\_\_\_\_  
(Name of Co-Owner/Voting Representative)  
as their representative to cast all votes and to express all approvals that such owners may be entitled to cast or express at all meetings of the membership of the Association and for all other purposes provided by the Declaration of Condominium, the Articles and By-Laws of the Association.

**THE FOLLOWING EXAMPLES ILLUSTRATE THE PROPER USE OF THIS CERTIFICATE:**

- (i) Unit owned by John Doe and his brother, Jim Doe. Voting Certificate required.
- (ii) Unit owned by John Doe and Jane Doe, husband and wife. Voting Certificate required.
- (iii) Unit owned by Overseas, Inc., a corporation. Voting Certificate must be filed designating person entitled to vote, signed by President or Vice-President of Corporation and attested by the Secretary or Assistant Secretary of the Corporation.
- (iv) Unit owned by John Jones. No Voting Certificate required.

This Certificate is made pursuant to the Declaration of Condominium and the By-Laws and shall revoke all prior Certificates and be valid until revoked by a subsequent Certificate.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CONDOMINIUM OWNER

\_\_\_\_\_  
CONDOMINIUM OWNER

\_\_\_\_\_  
CONDOMINIUM OWNER

**NOTE: This form is not a proxy and should not be used as such.**

# OCEAN CLUB SOUTH MANAGEMENT, INC.

c/o Surfcoast Realty, Inc.  
366 Flagler Avenue  
New Smyrna Beach, FL 32169

Dear Association Member:

\_\_\_\_\_, 2016

It is possible that in the near future the fire marshal could decide to order us to retrofit our buildings with fire safety equipment - including fire sprinkler systems - that were not required at the time the building was constructed. If this were to happen, these systems would have to be custom-designed and fabricated to be fitted to our existing facilities. The cost would likely run well into the thousands on dollars on a per-unit basis to accomplish this.

While we can be made to install an engineered life safety system, under current Florida law we can effectively immunize ourselves from the need to install fire sprinkler systems anywhere on the condominium property by taking a vote of the members and receiving approval of a majority of the total voting interests of the Association to waive retrofitting of fire sprinkler systems. So long as we pass the vote, record a proper certificate memorializing the vote in the Volusia County Public Records and file a form with the authorities in Tallahassee before December 31, 2016 we will be allowed to avoid having to install any sprinkler systems. When and if this is done you will be sent a form of disclosure that you should retain with your important papers in order to provide to all prospective purchasers of your unit and to all prospective renters, disclosing the fact that the members have chosen to waive some possible retrofitting requirements.

If you fail to vote or if you vote in the negative on this question, you will be voting to approve any fire sprinkler systems the fire marshal may order us to install after December 31, 2016, and you will be agreeing to incur that substantial expense on behalf of all owners in the community.

Make no mistake - the Board is not against fire safety. But it is against overburdening our residents with large special assessments that could create a financial hardship for some owners (maybe forcing some to sell) and also creating a system which could be aesthetically objectionable, possibly involving water lines running along interior walls and ceilings of units. We are in favor of responsible ownership, vigilance and proper maintenance to reduce fire risks.

It is important for you to sign properly and return the enclosed "Written Consent Form," indicating your agreement or disagreement with our proposal. In order for your signature to be valid, please follow these simple instructions:

1. If you know it, fill in your unit number at the top. If you are unsure of the correct number, you may leave it blank and we will enter it for you.
2. Every person who is a co-owner must sign, or designate one (1) co-owner to vote for all co-owners. A form for this, called a "Certificate of Appointment of Voting Representative" is enclosed. However, even if the co-owners are husband and wife they must still designate one of them as the voting representative, although it is also acceptable if both co-owners simply sign the written consent form in lieu of designating a voting member.
3. The completed document should be sent back to the Association in the enclosed envelope. **Please be sure to send it as soon as possible, as the law imposes a time deadline when we take this action without a meeting.**

Thank you in advance for your attention and participation in making this important decision.

THE BOARD OF DIRECTORS

By: \_\_\_\_\_

**OCEAN CLUB SOUTH MANAGEMENT, INC.**

**WRITTEN CONSENT FORM**

This Written Consent Form is executed by the Owner(s) of Unit \_\_\_\_\_ of Ocean Club South, a Condominium, pursuant to the provisions of Sections 718.112(2)(l) and 617.0701(4)(a), Fla. Stat. The undersigned, by execution of this instrument, waives the calling of the meeting and formal notice of same. The undersigned constitute either (1) the sole owner of the unit, or (2) all co-owners of the Unit, or (3) the co-owner designated by all co-owners or the authorized corporate representative shown as the voting representative for the unit on a form filed with the Secretary of the Association.

1. **As permitted by Section 718.112(2)(l), Fla. Stat. (a copy of which accompanied this document) should the Association eliminate its obligation to retrofit Ocean Club South, a Condominium, with a fire sprinkler system?**

(A "yes" vote is a vote to eliminate the need to install a fire sprinkler system on the condominium property. A "no" vote or a failure to respond at all means you want to install a fire sprinkler system should it be required, wherever it is required, in the units and common elements.)

\_\_\_\_\_  
**YES**

\_\_\_\_\_  
**NO**

Dated: \_\_\_\_\_, 2016

Owner: \_\_\_\_\_

Print name: \_\_\_\_\_

Unit Number: \_\_\_\_\_

Owner: \_\_\_\_\_

Print name: \_\_\_\_\_

Please return your written consent in the enclosed self-addressed stamped envelope to the Association as soon as possible. **This matter is time-sensitive.** If you have any questions, please contact the Association's manager, Surfcoast Realty, Inc., at 386-426-6332. Thank you.