

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION

Company: Charleston Square Condominium Association, Inc.
Mailing Address: c/o NextGen Community Management
9410 Corkscrew Palms Circle, Suite 201
Estero, FL 33928

Name: Al Moschner
Title: Treasurer
Phone: (239) 372-2996
Email: office@nextgcm.com

DS 2025-024

Petitioner's Attorney Representative: Maritrini Crampton
Lindsay & Allen, PLLC
Phone: (239) 593-7900
Email: trini@naples.law

Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

553.899(3)(a), *Florida Statutes*
Florida Building Code, Existing Building
Portions of Chapters 2, 31, and Appendix B Chapter 9B-52

Background

Per Chapter 2025-175, House Bill 913 became law effective July 1, 2025, which amends Section 553.899(3)(a), Florida Statutes, to provide that a residential condominium association must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age and every 10 years thereafter for each building on the condominium property that is three "habitable" stories or more in height as determined by the Florida Building Code.

Charleston Square Condominium Association, Inc. (the "Association") is a mixed-use condominium in Naples, Collier County Florida, with the 1st floor being solely commercial spaces, and the 2nd and 3rd floors being residential units.

The Association is seeking clarification on certain sections of the Florida Building Code. Specifically, it seeks a definition for a "habitable story" as determined by the Florida Building Code, when such space is not used for living, or residential occupancy but rather it is used for offices, showrooms, storage, and a restaurant. And whether there is a threshold as to what percentage of the story must be habitable for the entire story to be a "habitable story", particularly when most of the use is for offices, showrooms and storage.

553.899(3)(a), *Florida Statutes*

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

...

(3)(a) An owner or owners of a building that is three habitable stories or more in height as determined by the Florida Building Code and that is subject, in whole or in part, to the condominium or cooperative form of ownership as a residential condominium under chapter 718 or a residential cooperative under chapter 719 must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. . . .

Chapter 2

Section R202

HABITABLE SPACE. A space in a building for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, screen enclosures, sunroom categories I, II and III as defined in the Florida Building Code, storage, utility space, and similar areas are not considered habitable space.

Chapter 31

3109.2 Definitions

HABITABLE STRUCTURE. Structures designed primarily for human occupancy. Typically included within this category are residences, hotels and restaurants.

Appendix B Chapter 9B-52

B202 Definitions

OCCUPANCY. The purpose for which a building or part thereof is used or intended to be used. For the purposes of determining changes of occupancy for this code, the occupancy shall be considered the major occupancy group designations established by the locally adopted building code. Occupancy designations are as follows:

- i. Assembly
- ii. Business
- iii. Educational
- iv. Factory and Industrial
- v. High Hazard
- vi. Institutional
- vii. Mercantile
- viii. Residential
- ix. Storage

Question

Does the Charleston Square condominium building have three habitable stories pursuant to 553.899(3)(a), *Florida Statutes*, when the building is a mixed-use condominium in Naples, Collier County Florida, with the 1st floor being solely commercial spaces, and the 2nd and 3rd floors being residential units. The Florida Building Code does not explicitly define what a “habitable

story” is. Would the 1st floor commercial space be considered is a “habitable story” as determined by the Florida Building Code, when such space is not used for living, or residential occupancy but rather it is used for offices, showrooms, storage, and a restaurant. And whether there is a threshold as to what percentage of the story must be habitable for the entire story to be a "habitable story", particularly when most of the 1st floor commercial space use is for offices, showrooms and storage.

Summary

Petitioner respectfully believes the answer to the question outlined above is “NO.” The Association’s substantial interests are affected in that a determination of whether it has three "habitable" stories pursuant to the amended Section 553.889(3)(a), *Florida Statutes*, would dictate whether Petitioner must spend considerable time, money, and resources to comply with milestone requirements and must inform all of its members of same and plan and budget accordingly based on the determination. Chapter 2025-175, House Bill 913 become law July 1, 2025, and amended 553.899(3)(a), *Florida Statutes*, to include the word "**habitable**", when referring to condominium property that is three **habitable** stories or more in height. . . Unfortunately, the Florida Building Code, and the Collier County code, do not provide guidance as to what a "habitable story" is. The Florida Building Code provides that Habitable Structure is a structure designed for human occupancy; and Habitable Space is a space for living, sleeping, eating or cooking. But there is no threshold as to what percentage of the story must be habitable in order for the entire story to be a "habitable story".

Submitted: July 21, 2025

Respectfully Submitted,
Lindsay & Allen, PLLC

Maritrini Crampton

Maritrini Crampton, Esq.
On behalf of the Petitioner
Charleston Square Condominium Association, Inc.