

## **DS 2025-024 - Charleston Square Condominium Association, Inc.**

**Issue:** Petitioner is seeking a declaratory statement to clarify whether a mixed-use condominium building has three habitable stories pursuant to section 553.899(3)(a), Florida Statutes.

Petitioner presents the following questions:

1. 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?
2. Whether there is a threshold as to what percentage of the story must be habitable for the entire story to be a “habitable story”?

### **Background:**

According to the petitioner, the building in question is a mixed-use condominium in Naples, Collier County Florida, with the first floor being solely commercial spaces (offices, showrooms, storage, and restaurant) and the second and third floors being residential units.

### **Florida Statutes:**

Section 553.899 (3)(a), F.S.

“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.”

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### **Informal/Nonbinding Interpretation Report Number 9118**

Issued by the Building Officials Association of Florida, pursuant to s. 553.775(3)(h), F.S., and rule 61G20-2.006, F.A.C.

### **Question:**

Is it the intent of Section 553.899, Florida Statutes, and the Florida Building Code to include, within the definition of “habitable” stories for purposes of determining whether a condominium or cooperative is subject to milestone inspections and structural integrity reserve studies, stories in mixed-use buildings that are (a) used exclusively for commercial purposes and contain bathrooms but no sleeping areas, (b) dedicated solely to parking garage use, or (c) partially residential in nature, such as a loft that includes a sleeping area but lacks restroom facilities?

**Answer:**

With the change in HB 913 effective 7-1-25, the scope is now: (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.

This provides relief to 3 story buildings that have a floor that does not meet the definition of Habitable Space per the FBC.

Based on this, there are now 3 answers: 3 stories in mixed-use buildings that are

(a) used exclusively for commercial purposes and contain bathrooms but no sleeping areas, these should not be included as one floor or more is not habitable.

(b) dedicated solely to a parking garage use, should not be included as one floor or more is not habitable.

(c) partially residential in nature, such as a loft that includes a sleeping area but lacks restroom facilities, these should be included as a sleeping area is Habitable space.

Since the baseline for a building that is required to have a Milestone Inspection is three stories or more, determined by the Florida Building Code, and all habitable and nonhabitable areas are to be examined, unless the building meets the exceptions in section (4), then the number of stories would drive the requirement no matter if they are habitable or not.

**Commentary:**

Definition of habitable space from Chapter 2: HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, screen enclosures, sunroom Categories I, II, III and IV as defined in Section 2002.6, storage or utility spaces and similar areas are not considered habitable spaces.

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**8<sup>th</sup> Edition (2023) Florida Building Code, Building Provisions**

**CHAPTER 2 DEFINITIONS**

**HABITABLE SPACE.** A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, screen enclosures, sunroom Categories I, II, III and IV as defined in Section 2002.6, storage or utility spaces and similar areas are not considered habitable spaces.

**MULTISTORY UNIT.** A *dwelling unit* or *sleeping unit* with *habitable space* located on more than one *story*.

**OCCUPIABLE SPACE.** A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of this code.

## **SECTION 3109 STRUCTURES SEAWARD OF A COASTAL CONSTRUCTION CONTROL LINE**

**3109.2 Definitions.** The following words and terms shall, for the purposes of this section, have the indicated meanings shown herein

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

**308.3 Institutional Group I-1.** Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, **who reside on a 24- hour basis** in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.3.1 or 308.3.2. This group shall include, but not be limited to, the following:

**[F] 907.2.6.1 Group I-1.** In Group I-1 occupancies, an automatic smoke detection system shall be installed in corridors, waiting areas open to corridors and **habitable spaces** other than **sleeping units** and kitchens. The system shall be activated in accordance with Section 907.5.

**907.5.2.3.2 Groups I-1 and R-1.** **Habitable spaces** in dwelling units and sleeping units in Group I-1 and R-1 occupancies in accordance with Table 907.5.2.3.2 shall be provided with visible alarm notification. Visible alarms shall be activated by the in-room smoke alarm and the building fire alarm system.

**1208.1 Minimum room widths.** **Habitable spaces**, other than a kitchen, shall be not less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls. 1208.2 Minimum ceiling heights. Occupiable spaces, habitable spaces and corridors shall have a ceiling height of no...

Habitable – “Suitable to live in; inhabitable.” The American Heritage Dictionary of the English Language, 590-91 (William Morris, ed.) (New College Edition, 1980).

### **Staff Analysis**

#### **Question #1:**

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?

**Answer:**

#### **Option #1/Petitioner:**

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 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 not threshold as to what percentage of the story must be habitable in order for the entire story to be a "habitable story."

**Option #2/Staff:**

The answer to the Petitioner's question is no. Pursuant to the definition of "habitable space" in the Florida Building Code, Building, 8th (2023), which is more specific to residential living, the existing first floor which consists of commercial spaces (offices, showrooms, storage, and restaurant) is not a habitable story. Therefore, the building in question has only two habitable stories.

**Question #2:**

Whether there is a threshold as to what percentage of the story must be habitable for the entire story to be a "habitable story"?

**Answer:** This is a question of general applicability, not tied to the petitioner's particular circumstances, and thus cannot be answered in this declaratory statement. *See, e.g., Sutton v. Dep't of Envtl. Prot.*, 654 So. 2d 1047, 1048-49, (Fla. 5th DCA 1995).