# Community Counsel

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## Are You Ready for Retrofitting??

It is not our wish to give bad news at this time of year, especially after all of us have had so much of it recently. (There is some good news around: it appears that efforts to rescue and restore condominium and cooperative arbitration have been largely successful. The staff of arbitrators, once at seven, then cut down to two, is now on its way back to at least five, and a bill before the legislature would expand its jurisdiction to require the handling of election disputes in an expedited fashion.)

There is bad news out there, however, and some Associations best learn of it sooner rather than later. The issue is retrofitting of existing buildings to comply with the requirements of the Florida Fire Prevention Code, which includes something called the National Fire Protection Association's (NFPA) Life Safety Code. NFPA was adopted as part of the Florida Fire Prevention Code by the 2000 legislature. It became part of the code as of July 1, 2001. NFPA contains its own compliance date – existing buildings must be in compliance with its terms no later than twelve (12) years after its adoption. Buildings required to have automatic sprinkler systems, and/or other fire safety devices, must retrofit them by no later than 2013.

Buildings over 75 feet in height will be required to install automatic sprinklers in all portions of the buildings, including living areas, or to have alternate technology approved. Either way, high rise properties are faced with a serious concern, because it is very possible that the cost of retrofitting may far exceed the cost of new construction. Particularly where residents may be retirees with mostly fixed incomes, the prospect of an assessment for such work may cause owners to sell or abandon their properties, or to face bankruptcy when large assessment overwhelm their financial resources.

**We wish you a world of peace, health and prosperity in 2002. May "tragedy" drop from the dictionary from lack of use.**

In anticipation of the need to prepare both members and facilities for this work, it would be appropriate for condominiums to hire experts and establish life safety reserves to fund the expected cost. With an eleven or twelve year head start, the planning and payment for the work could make it far more palatable.

We recommend you consult your local fire marshal's office to find out when they intend to start advising communities of their need to comply. Once contacted, a community has 180 days to prepare and deliver a compliance plan.

### Recent Cases

- Suit between two owners over extensive alterations needs to go to trial, even after Association approval.
- Private not for profit social club not immune from suit for wrongful death caused by a gun fired by an inebriated patron of the club.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

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# RECENT CASE SUMMARIES

In **Yardum vs. Scalese**, 26 Fla. L. Weekly D2713 (Fla. 4th DCA 2001), Yardum sued Scalese for trespass, private nuisance, and negligence in connection with renovations to Scalese's condominium unit. Yardum alleged that the renovations infringed upon the quiet enjoyment of his condominium unit that is located directly below Scalese's unit. The dispute stemmed from Scalese's installation of a roman style jacuzzi tub in his unit. Initially, Scalese commenced the installation without having obtained the approval of the Association. The Association ordered the installation halted until the renovations were approved by the Association. Thereafter, Association gave its approval for the renovations and in its written approval stated Association hereby ".... grants you permission to replace the section of the main waste line which is common property in your bathroom." Scalese performed extensive drilling into the concrete slab that comprised both the floor of Scalese's unit and the ceiling of Yardum's unit. Pipes were fitted through the new holes joining the new tub to the main vent stack. These pipes extended through the slab into Yardum's unit into the area above the drop ceiling which concealed them from view. Yardum alleged that these pipes intruded into his unit. Scalese argued that the declaration of condominium provided an easement in the space through which he may run pipes in order to maintain his apartment. Scalese further argued that the permission granted by the board authorized him to drill through the floor and alter the existing pipe system. The trial court granted summary judgment in favor of Scalese. In reversing the trial court, the Fourth District Court of Appeal held that summary judgment is proper only when there are no disputed issues of material fact. The appellate court held that, in this case, a disputed issue of material fact existed as to the extent and scope of the approval given by the Association to drill into the slab and install new piping. The appellate court further held that because the written permission granted by the board is reasonably open to differing interpretations, summary judgment was not proper in this case.

In **Fritsch vs. Rocky Bayou Country Club, Inc.**, 26 Fla. L. Weekly D2736 (Fla. 1st DCA 2001), while acting as a good Samaritan in driving a fellow club member (Wright) home because of Wright's extremely inebriated condition, James Fritsch was killed by a gunshot fired by Wright. Douglas Fritsch, as the personal representative of his deceased father's estate, brought a wrongful death lawsuit alleging that Rocky Bayou served alcoholic beverages to Wright, resulting in Wright's intoxication, despite knowing Wright to be "habitually addicted to the use of alcoholic beverages." The trial court granted summary judgment in favor of Rocky Bayou on the grounds that as a private, members-only, not-for-profit corporation, Rocky Bayou was immune from liability under Florida Law; that Rocky Bayou had no legal duty to protect Fritsch from Wright's conduct; and even assuming such a duty existed, it was not foreseeable that, as a result of intoxication, Wright would kill Fritsch with a personal firearm. In reversing the trial court, the First District Court of Appeal noted that to state a cause of action for negligence in a wrongful death action, a litigant is required to allege 1) that a legal duty was owed to the decedent; 2) that the legal duty was breached; 3) that the breach of the legal duty was a legal or proximate cause of the decedent's death; and 4) that decedent's heirs suffered damages as a result of the breach. The appellate court held that Rocky Bayou was not immune from liability simply because it was a not-for-profit corporation, noting that no such immunity exists under the applicable beverage laws. Secondly, the appellate court held that Rocky Bayou was not immune from liability as a "social host." Rocky Bayou holds a license to sell liquor and charges for alcoholic drinks, which it serves on a regular basis. Rocky Bayou sold and served large quantities of alcoholic beverages to Wright at a "golf mixer" during the several hours immediately before Wright shot and killed the Fritsch. The "golf mixer" was not a private social function and thus does not fall within the ambit of the Florida cases exempting a "social host" from liability. Additionally, the appellate court held that Rocky Bayou created a "zone of danger" by serving Wright too much alcohol and therefore, some injury could be anticipated.

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