

# CITIZENS' ASSOCIATION

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## *News & Views*

January 2022

### Flood Insurance Renewal

by Ronald Matzner

According to experts gathered at a flood risk workshop held at the Cox Science Center on December 13, 2021, Flood insurance premiums are likely to increase for many condominium owners in the South End of Palm Beach for policies renewing after April 1, 2022.

On October 1, 2021, FEMA announced the elimination of preferred risk pricing for condominiums situated on the ocean in areas such as the South End of Palm Beach considered at low risk of flooding because of their location on the coastal ridge. Nearly all of the condominiums on the east or ocean side of South Ocean Boulevard are in that category, receiving an X designation, the best flood insurance rating in Florida. Based primarily on their location on the coastal ridge, condominiums and their individual units received the special preferred risk pricing.

The new risk rating system is individualized, taking into account the distance from water flooding sources and the cost to rebuild. It is not based on the flood zone or the base flood elevation (BFE). Everyone in a building might wind up paying a different rate depending on the location and floor of the units. Check with your insurance agent before your policy renews.

### Rapid Covid-19 Testing for Town of Palm Beach Residents



Covid-19 is surging again because of the highly contagious Omicron variant, currently the dominant variant in the country. The demand for tests and rush to get tested are at record highs, however, access to supplies is limited because of the unprecedented demand. In its ongoing efforts to help keep Town of Palm Beach residents safe, the Palm Beach Police & Fire Foundation is funding Rapid Covid-19 testing in partnership with the Town of Palm Beach. Rapid Covid-19 Testing will be available to Town of Palm Beach residents only (by appointment only) on Tuesday, January 4, 2022, and Thursday, January 6, 2022, with additional dates to be announced. Residents can register online for an appointment and will be required to show proof of residency with a local ID or utility bill at the testing site. Testing will take place at the Town of Palm Beach South Fire Station at 2185 South Ocean Blvd with parking in the Phipps Ocean Park south parking lot (NOT the Fire Station Parking lot).

Online registration link:

<https://topbcovid.as.me/Rapidtest> can also be found on the

Foundation's website, [www.PBPF.us](http://www.PBPF.us). Additional testing dates will be announced on the Foundation's home page at [pbpf.us](http://pbpf.us), and through Town of Palm Beach notices.



# Estate Tax and Gift Tax Changes In 2022

by The Karp Law Firm



Two key estate planning numbers will change effective January 1, 2022: The lifetime unified gift and estate tax exemption, and the annual estate tax exclusion. These changes may impact you if you have a taxable estate.

The lifetime exemption is the total amount of money that you can give away, free of estate tax, in life and/or death. A married couple can give away twice that amount. Effective January 1, 2022, the exemption increases to \$12,060,000. (The current lifetime exemption is \$11,700,000.)

The annual exclusion is the amount that you may give to as many individuals as you wish within a given year, without reducing your lifetime exemption. A married couple can double that amount. The annual exclusion will increase to \$16,000 effective January 1, 2022. (The current exclusion is \$15,000.)

## **Reduce Your Taxable Estate By Making Annual Gifts**

If you have a potentially taxable estate, transferring money via the annual exclusion over the years can be a good strategy to avoid or reduce estate taxes and put more tax-free money in the hands of loved ones. Here are a few examples of how this strategy works:

### **You are not married:**

You give your three children \$16,000 each in 2022, for a total gift of \$48,000. You will not need to file a gift tax return and your lifetime unified gift and estate tax exemption will be unaffected.

You give your three children \$20,000 each in 2022, for a total gift of \$60,000. The excess of each gift over \$16,000 must be totaled and reported via a federal gift tax form, and the amount you will be allowed to pass tax-free going forward will be reduced correspondingly. In this case, your lifetime exemption is reduced by \$12,000 (\$20,000 minus exclusion of \$16,000, x 3 gifts).

### **You are married:**

You and your spouse give your three children \$16,000 each in 2022, for a total gift of \$96,000. You will not need to file a gift tax return and neither of your lifetime gift and estate tax exemptions are reduced.

You and your spouse give your two sons and your daughter \$20,000 each in 2022, for a total gift of \$120,000. The excess of each gift over \$16,000 must be totaled and reported via a federal gift tax form, and the amount each of you will be allowed to pass tax-free going forward will be reduced correspondingly. In this case, each spouse's lifetime exemption is reduced by \$12,000 (\$20,000 minus exclusion of \$16,000, x 3 gifts).

## **Pay Medical and Educational Expenses: No Limit**

Another way to reduce the size of your taxable estate is by paying someone's medical or educational expenses. The payment must be made directly to the provider. When you make such gifts, you are not limited to the \$16,000 cap. For example, you could pay your grandchild's annual \$35,000 college tuition by writing a check directly to his school. You would not have to file a gift tax return, and neither your annual exclusion or your lifetime exemption would be impacted.

## **Portability of Lifetime Exemption Between Spouses**

Surviving spouses have the right to transfer to themselves any unused portion of their deceased spouse's estate tax exemption, thus adding to their own exemption and allowing more money to be passed to heirs tax-free. This feature of the tax code is called "portability. To take advantage of portability, the personal representative (executor) or trustee of the decedent's estate must file a federal estate tax return (Form 706) and take the portability election.

## **Exemption Scheduled To Plunge in 2026, So Make Gifts Now**

The estate tax exemption has been gradually increasing under the provisions of the 2017 Tax Cuts and Jobs Act. However, unless other legislation is passed, on January 1, 2026 the exemption will return to its pre-2017 level of \$5.49 million per decedent, adjusted for inflation. That will bring the lifetime exemption somewhere above \$6 million. It follows that if estate taxes are your concern, you would be wise to make gift-tax-free gifts as much as possible before then.

## **Don't Confuse Federal Tax Rules and Medicaid Rules**

If you are considering applying for Medicaid benefits for long-term nursing costs, you should understand that Medicaid rules are different from federal estate tax rules. Although you can give up to \$16,000 to as many individuals as you wish annually without impacting your exemption, the gift WILL count against your Medicaid eligibility if it is made within five years of applying for benefits.





## South Palm Beach: Erosion damage at three condos prompts urgent push for repairs

Posted by The Coastal Star on December 29, 2021 by Joe Capozzi



The Champlain Towers collapse that killed 98 people in Surfside in June weighed heavily over a special magistrate's hearing last month when South Palm Beach officials voiced concerns about erosion damage to three oceanfront condominiums.

The Dec. 22 hearing dealt with code violations at one condo, La Pensee, but discussion of that case disclosed concerns about damages at two other condos, Horizon East and Mayfair House East.

"We don't want another Surfside here in South Palm Beach," Town Attorney Glen Torcivia said, explaining why the town is demanding immediate repairs to sea wall erosion near a corner of the pool deck behind La Pensee, a 24-unit oceanfront condo at 4000 S. Ocean Blvd.

Special Magistrate Mitty Barnard agreed with the town code officer's determination that the damage violated the town code as "an unsafe structure."

She gave La Pensee a Feb. 1 deadline to secure permits for the repairs and a March 1 deadline to complete the repairs. La Pensee had been seeking a March 18 deadline to finish the work, a time line that left town officials uncomfortable.

Pounding surf during November king tides eroded a 5-foot section of the sea wall near the stairs at the northeast corner of the pool deck, said Kevin Markow, an attorney for the condo.

But, he said, engineers who have looked at the damage said the six-story condo, built in 1985, and its residents are not in imminent danger, an opinion town officials aren't ready to fully support.

Markow said the condo was in the process of hiring an engineer to conduct a thorough study and report as part of the repair plans.

Those plans were initiated, he said, before the town's building officials alerted code enforcement about potential safety violations.

"We will certainly share our engineering report with the town when we have it," Markow said. "I don't know if it should be a condition of the order. We all have the same interests, to make sure everybody is safe and the property is secure. There's no indication that it is not, at present."

Town Manager Robert Kellogg took issue with that answer, sparking a brief debate with Markow.

"I totally disagree," Kellogg said. "You're not an engineer. We need some kind of a letter from them saying that there is no imminent danger to that facility or that structure. Period."

Markow responded, "I mean, has the town sent an engineer out to the property?"

"The only people I know that have been out there are inspectors," Kellogg said.

"And they're not engineers, right?" Markow replied.

"They're not," Kellogg said, leaning closer to his microphone, "but let me tell you something. We had a situation in Surfside. I'm dealing with a situation very similar to this right across the street from Town Hall where I have an engineering report that there is a potential collapse over there. And I want to ensure that the residents of that condo are protected."

Continued on Page 4

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### *Tips From Tony*

Aiming in golf seems to be difficult for many golfers. While some will check their alignment of their feet by placing a club across their toe line, often it is as simple as the actual clubface is pointing in the wrong direction at address and impact. From top to bottom: notice the clubface is square but many golfers think is "open". Next picture is how a "square clubface" looks behind the ball. Notice the difference between the closed club faces. Try "squaring your clubface at address and hit the ball straighter!"

Tony Chateauvert  
Palm Beach Par 3 Pro



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Continued From Page 3....

## Repairs begun at Mayfair

After the meeting, Kellogg explained that his remarks about the "potential collapse" across the street from Town Hall were about erosion problems discovered in June to the pool and pool deck at Horizon East, a seven-story condo built in 1973.

A private engineering report commissioned by The Mayfair House, which is immediately south of Horizon East, warned that the north segment of Mayfair House East was "at risk of imminent collapse" after erosion led to the formation of a sinkhole.

Emergency repairs have been initiated since the report was issued June 30. Workers are still in the process of "shoring up the void" with jacks and steel beams and plates, Kellogg said after the Dec. 22 hearing.

During the hearing, Markow assured town officials that La Pensee's top priority is the safety of its residents.

"But you have to understand a little bit of the origin of how we wound up here," he said. "We have a disgruntled resident who is in multiple litigation proceedings with the association and reported this violation as a matter of spite."

Torvicia said town officials don't care how the violation was reported. They just want the La Pensee repairs done as soon as possible.

The special magistrate asked town officials if they consider the damage "a health/safety issue at the moment."

"We don't know," code enforcement officer Manny Palacios said. We don't know the depth and problem of the erosion issue. That's exactly why the building official would like to have a letter from their engineers stating right now there is no immediate danger to the pool or the structure itself."

Markow assured the town and the magistrate that the board of La Pensee wants to make the repairs as soon as possible.

"We take it very seriously but by no means do we think this is an issue where residents' safety is an issue," he said.

"The cause was king tides in four to five days in November. It was not a lack of maintenance. It was something that was completely unforeseeable."

If La Pensee fails to meet the magistrate's February and March deadlines, it can be fined up to \$100 a day.

With condos and towns up and down the coast scrambling to hire engineers and contractors to make sure their buildings are safe, getting the repairs done by March 1 might be a challenge, Markow said.

"Certainly in a post-Champlain Towers world, what I can continue to offer is to share any engineering records we do have and any reports we do receive with the town immediately. What I can tell you based on engineers that have been out there is, nobody went out there and said, 'You've got a major problem on your hands.' It seems to be a pretty garden variety sea wall erosion sea wall repair," Markow said.

"We understand the urgency and the board is certainly acting responsibly. ... But I don't want to hit the panic button" when no one else is.

Although Highland Beach and Boca Raton have moved ahead with their own inspection rules, South Palm Beach and other municipalities decided to wait for guidance from Palm Beach County on a countywide program. The county, though, has put that plan on hold and is waiting to see if the state Legislature creates a statewide program.

In light of the problems at Horizon East and Le Pensee, might the town reconsider implementing its own program?

"Certainly we can reconsider it," Kellogg said in an interview Dec. 23, "but with our building official being part of that task force that was put together by the (county) League of Cities, the council just decided to wait and see if the Legislature is going to do anything. I think there is still a large concern about not only those two buildings, but other structures in town and the potential damage being done."

At the Town of Palm Beach meeting on January 12th, 2022, the CONSENSUS OF THE COUNCIL WAS TO SUPPORT THE PROGRAM AND ALLOW STAFF TO MOVE FORWARD WITH THE PROPOSED BUILDING SAFETY INSPECTION AND RECERTIFICATION. (Presented by Wayne Bergman, Director of Planning, Zoning & Building)



## Town to promote public awareness of new bicycle traffic law

William Kelly-Communications Coordinator



A change in state law should reduce the number of conflicts between motorists and bicyclists while making it easier for drivers to traverse town roadways.

Senate Bill 950, which took effect July 1, requires bicyclists to ride in a single file on roads where there are no designated bicycle lanes, Police Chief Nicholas Caristo told the Town Council earlier this month.

The previous allowance of bicyclists riding two abreast no longer applies in town due to the legal change and the width of town roadways, Caristo said.

The new law was adopted to make conditions safer for bicyclists. But it is bound to make many drivers happy. Drivers have long been frustrated with the relatively slow-moving groups of bicyclists who ride along State Road A1A on mornings and weekends to enjoy the ocean view.

"We all know this has been a thorn in our side for years," Donald Singer, co-chairman of the Citizens' Association of Palm Beach, told the council. "We could not be happier."

But Singer said the state is too slow to install signs so residents and bicyclists are aware of the change. Singer said the Citizens' Association will assist the Police Department with informing the public about the new law.

The only exception to the new single-file rule is when a bicyclist is avoiding a road hazard or overtaking another bicyclist.

The new law also allows drivers to briefly drive to the left, over double yellow lines, to pass cyclists with a minimum of three feet passing distance.

Town Manager Kirk Blouin said the legal change was needed, and he agreed that a public education is necessary along with signs.

"It's a very emotional issue for the citizens and for the cyclists as well," Blouin said.

Some bicyclists follow the rules of the road, but drivers still get angry with them, he said. Then there are those bicyclists who don't seem to care about the rules of the road, he said. "Some bike groups are very large and frankly I find them to be very obnoxious," Blouin said. "Going too slow or riding two, three or four abreast with total disregard for the laws and that compounds the issue."

The law does not affect bicycle use of the Lake Trail, Caristo said.

William Kelly

[williamkelly@palmbeachcivic.org](mailto:williamkelly@palmbeachcivic.org)

We welcome your feedback. If you have any comments or questions, please email [pbca@palmbeachcivic.org](mailto:pbca@palmbeachcivic.org)

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Ronald Matzner

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# Citizens Board Members contribution to Town of Palm Beach



SKIP ALDRIDGE is a member of the newly formed Strategic Planning Board for the Town of Palm Beach. This is a new Board just formed by the Mayor of Palm Beach, Danielle Moore. It consists of 8 citizen members with "Dani" Moore as the chairman of the board.

The Board is charged with developing a 5 year strategic plan for the Town of Palm Beach. The first meeting is January 20, 2022 which will include a review of the 2003 strategic plan as well as discussions about the path forward, process, public engagement and more. The council will be updated about the board's progress, culminating with a presentation of the final plan at the April 2023 council meeting.

DONALD SINGER is on the Town's Employee Relation Commission representing employees and was a member of the Recreation Commission from 2009 until 2015.



STEPHEN JACOBS is on Town's Employee Relations committee

DICK KLEID is a member of the planning and zoning commission. Said commission acts in an advisory capacity to the town council in all matters relating to municipal planning and development. The commission is required to follow the concepts and concerns of the town comprehensive land use plan in all planning, zoning and development related deliberations and decisions. At present, inter alia, the commission is reviewing the town zoning code with an eye to rewriting it to keep the charm and scale of palm beach intact for future generations.



PAMELA SABA is on the code enforcement board which is an extension of the Palm Beach Police Department. She is also a weekly volunteer at the PBPB as well as helping occasionally at the Palm Beach Police and Fire Foundation.

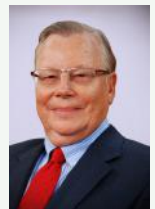
DAN MCDONNELL is on the Code Enforcement Board and will be term-limited off in 2023 and cannot be re-appointed. He has no pictures as he is the photographer behind the camera.



BRAM MAJTLIS is Chair on the Code Enforcement Board

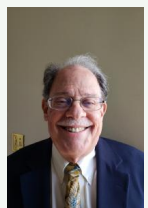
The Code Enforcement Board hears cases involving violations of the Town Code and ordinances, and imposes administrative fines and other noncriminal penalties where a pending or repeated violation exists. Members must be residents and are appointed by Town Council on the basis of experience or interest in the fields of zoning and building control. The Board includes, whenever possible, an architect, business person, engineer, general contractor, realtor, subcontractor, general member, or person with experience in the field of public health. Before becoming the Chair of the Code Enforcement Board in May of 2021, Bram was an alternate member, a full voting member and the Vice Chair of the Board.

ERICK REICKERT is a member of the Shore Protection Board



HARRY WOLIN is a member of the Underground Utility Task Force and a member of the Rotary Club of Lake Worth Beach

Ronald Matzner is a member of the Shore Protection Board





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In the state of New York, It has long been the recognized rule that generally a court will not question the decisions made by the board of a private corporation. This concept of non-judicial review has been referred to as the business judgment rule. New York courts have applied the business judgment rule to co-op boards, thereby granting them great discretion in deciding whether to approve or deny the sale of an apartment. A co-op must follow in order to withstand the judicial review of the courts: The board's actions must be (i) in furtherance of the purpose of the co-op; (ii) within the scope of its authority; and (iii) in good faith.

In determining if a board has exceeded its authority, a court will review the co-op's governing documents for explicit authorization of the board actions. These documents include the certificate of incorporation, by-laws and the proprietary lease. Most leases provide that the transfer of shares and lease to a new tenant/shareholder must be made with the consent of the board. Some leases provide for no approval and, in the event of a denial, the lease should be reviewed to determine if the board acted beyond the scope of its authority.

If a board exercises discriminatory practices in its approval process, a court may review improper board action. If a denial is based on race, creed, color, sex, age, religion or disability, the prospective purchaser or owner cannot merely allege discrimination but must meet the burden of proof.

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## Board Denials on the Rise

BY ERIC P. GONCHAR, ESQ.

As the resale value and demand for cooperative apartments increase and the supply of available units decreases, purchasers are facing denials for admission to co-op buildings in record number. There was a time when many co-op boards concluded that if a bank had given a prospective buyer a loan, the board would consent to the sale of an apartment. Co-op boards have since become much more selective about their future neighbors.

The first concept that all sellers and prospective owners of a co-op apartment must grasp is that cooperative ownership is inherently different from that of fee ownership in which the owner has an interest in real property. Co-ops were created to promote stability in a building and accordingly, a co-op board can determine who may or may not become a shareholder. Co-ops can use the scrutiny of reviewing prospective purchasers' applications as a way of protecting the shareholders from those who do not fit the financial and social profile of a building. Unless specifically excepted with exact language in the proprietary lease, a transfer of shares to an apartment cannot take place without board consent.

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Continued From Page 7...

In a recent case, *Simpson v. Berkley Owner's Corp.*, the Appellate Division of New York determined that, absent illegal discrimination, the co-op board has the right to deny a prospective shareholder's application for a purchase of an apartment for any reason or no reason.

In this case, the co-op's denial of a purchase application was upheld. The court stated that unless the plaintiff could submit evidence that the board did not act in the best interests of its shareholders, the court need not review the case. The *Simpson* case puts a tremendous burden on the prospective purchaser who feels that his or her denial is discriminatory: The buyer must obtain sufficient evidence that the board's actions were predicated on a discriminatory practice, a task that can be time-consuming and very costly.

A board can determine, at its own discretion, whether the application of a prospective purchaser reflected that he or she cannot meet the financial obligations of owning a co-op apartment. In addition, a board can decide if the purchaser intends to occupy the apartment or merely to sublet it. While a purchaser may believe there are discriminatory overtones, the reality is that co-op boards do not have to disclose why a prospective purchaser has been denied admission.

Similar to discrimination cases, when bad faith is alleged and backed by solid evidence, the courts will review the board's actions but such review will not guarantee the outcome of the case.



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It is prohibited for a co-op to impose unique restrictions on different purchasers. If a properly adopted co-op by-law or resolution imposes financial conditions, such a policy is acceptable provided these conditions apply to all shareholders and/or prospective purchasers.

Co-op corporations continue to decide for themselves with whom they wish to share their homes, common areas, meetings, rules and responsibilities. It is up to the boards to make sure that they adhere to building policy when making decisions and to establish an approval process that benefits the entire building.





# Florida Legislative Changes for Condos and Coops

1. Official Records Request (s.718.111(12)(a), (b), (c), F.S., effective July 1, 2021) – These recent amendments expand a tenant's right to inspect the declaration of condominium, bylaws and rules; requires bids for work to be maintained for at least one (1) year after receipt and prohibits the association from requiring a purpose or reason for a records request. Additionally, s. 718.501(1), F.S., (effective July 1, 2021) was also amended to expand the jurisdiction of the Department of Business and Professional Regulation, Division of Condominiums, Timeshares and Mobile Homes ("Division") to investigate complaints related to the maintenance of and unit owner access to association official records.
2. Assessment Notices (s. 718.111(12) (a) and (c), F.S.; s. 718.116(6)(b), F.S.; 718.121(4) and (5), F.S., effective July 1, 2021) – These amendments require an association to maintain as part of the association's official records all affirmative acknowledgments made by owners if the association changes its method of delivery of assessment notices; increases the time frame for the required presuit Intent to Lien and Intent to Foreclose notices from 30 days to 45 days; and requires an additional Statement of Account and Notice of Late Assessment prior to the association turning over the owner's account to the attorney.
3. Notice of Meetings (s. 718.112(2)(d)3. & 4., F.S., effective July 1, 2021) – This change expands the ability of the association to post official notices to the membership on association property and requires notices of meetings to include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner (consenting to receive electronic notice); and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the association's bylaws, or at least fourteen (14) days, if there is no timeframe specified.
4. Notice of Meetings (s. 718.112(2)(d)3. & 4., F.S., effective July 1, 2021) – This change expands the ability of the association to post official notices to the membership on association property and requires notices of meetings to include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner (consenting to receive electronic notice); and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the association's bylaws, or at least fourteen (14) days, if there is no timeframe specified.



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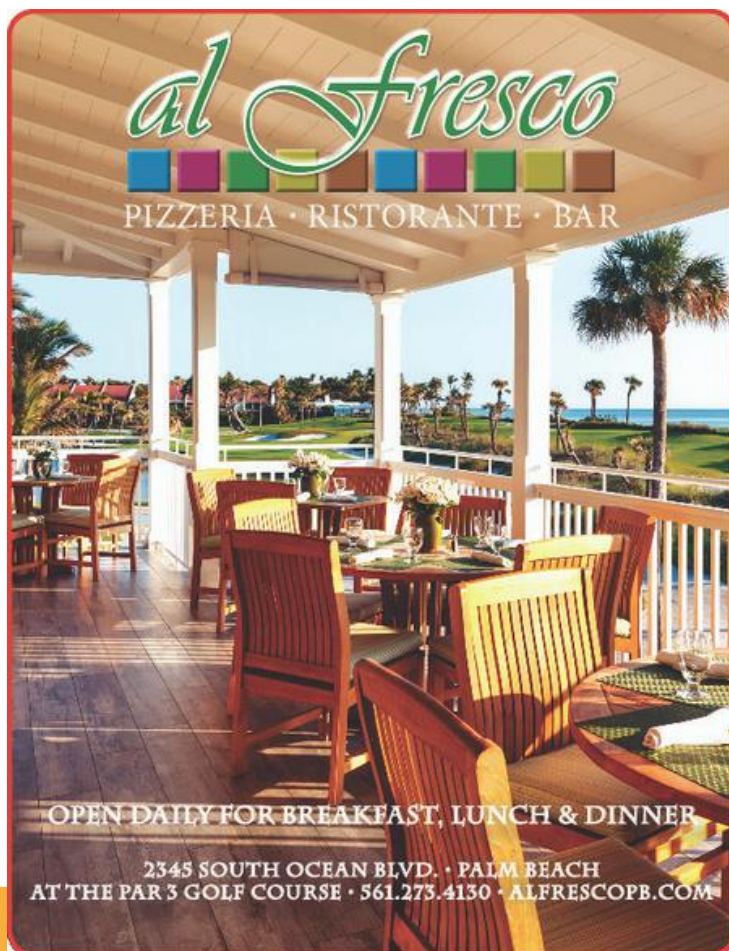
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# Fire-Rescue Department celebrates

## 100th anniversary

By [rharp@pbpost.com](mailto:rharp@pbpost.com)

A centennial celebration for the Palm Beach Fire-Rescue Department took place Saturday on the lawn of one of the town's original fire stations.

During the town's Public Safety Day and Fire Department Centennial Event, Darrel Donatto, who has served with the department for 18 years, recalled his first days at the station, which has since been renovated as the Town Hall. The fire chief and director of emergency management said the town's Fire-Rescue Department has experienced many changes but has always been held in high regard because of first responders' dedication and support from the community.

"As Fire-Rescue [employees], we are public servants. We exist to serve the public," Donatto said.

"We can't do that without relationships and trust. For 100 years, we have had that relationship and that trust with this community, and we are here to celebrate that 100 years of service to the Town of Palm Beach."

The event took place at Midtown Station 1. Between 300 and 400 people attended.

By noon, the sounds of patriotic melodies from pipes and drums, the engines of Fire Engine 98 and Police Department vehicle motors, and the marching of honor guards could be heard in the town center as a procession approached the intersection of South County Road and Australian Avenue.

After the national anthem, attorney Bill Bone welcomed several guests, including John Scarpa and Tim Moran, the co-founders of the Palm Beach Police and Fire Foundation.

Residents need to know not only what services are provided, but also the honorable employees who provide them, said Scarpa, the foundation's chief executive officer.

"We can't be any more proud of our Fire Department and what it has established since its inception," he said. "Today, we are convinced that it is among one of the best-trained men and women for fire and rescue."

Tom Quick, the chairman and chief executive officer of Palm Beach Crime Watch, said the town has a reputation of being one of the safest in the country.

"It's a day to celebrate," Quick said. "It really is a group effort that continues to give us the reputation that this island enjoys."



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