

Read the letter below that NMMA attorneys will be sending to offending municipalities:

June 27, 2006

Dear [City / County Attorney],

Our firm represents the National Marine Manufacturers Association (NMMA). NMMA is the nation's largest recreational marine industry association, representing over 1,600 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. Recreational boating is a popular American pastime, with almost 71 million boaters nationwide and over 13 million registered boats. In 2004, Florida ranked as the top state for boat registrations with over 946,000 boats registered. The recreational boating industry is a substantial contributor to the nation's economy with expenditures on recreational marine products and services of over \$37 billion in 2005 alone. In addition, the Florida Legislature recently determined that the annual economic impact of boating on the state of Florida was \$14 billion. Several boating advocates have called to our attention your ordinance related to [insert ordinance description and citation].

Because of a 2006 amendment to the Florida Statutes by the adoption of chapter 2006-309, Laws of Florida, we believe your ordinance is likely inconsistent with Florida law effective July 1, 2006.

Chapter 2006-309 amends chapter 327.60, Florida Statutes, as follows:

Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40.

However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields anchorage of non-live-aboard vessels engaged in the exercise of rights of navigation.

Pursuant to this statutory amendment, a local government's anchoring ordinance may apply to any vessels anchored in a mooring field; however, outside of mooring fields, an anchoring ordinance may only apply to floating structures or live-aboard vessels. Prior to the new legislative change, the law required non-live-aboard vessels to be "engaged in the exercise of rights of navigation" to fall outside of a local government's right to regulate its anchoring. This new law, however, prohibits a local government from enacting or enforcing an anchoring ordinance against any

vessel which is not being used as a live-aboard residence outside of a mooring field.

The issue of whether a vessel is a live-aboard or non-live-aboard vessel is a question of fact relating to the boater's intent; the size or type of vessel is irrelevant. Even a yacht with a full kitchen and sleeping quarters fails to qualify as a live-aboard vessel if the boater does not intend to reside in the vessel for an "unlimited time" or use the vessel "solely as a residence." *See* footnote 2, *infra*. Thus

Underlined and strike-through language represents the chapter 2006-309 amendments to chapter 327.60.

Chapter 327.02(9), Florida Statutes, defines a "floating structure" as a "floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property."

Chapter 327.02(16), Florida Statutes, narrowly defines "live-aboard vessel" as "any vessel used solely as a residence;" or "any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence."

In Florida, "[a] legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home." *Perez v. Marti*, 770 So.2d 284, 289 (Fla. 3d DCA 2000). The law requires "positive or presumptive proof" of the vessel owner's intention to remain in the vessel "for unlimited time" in order for it to qualify as a legal residence. *Miller v. Gross*, 788 So.2d 256, 259 (Fla. 4th DCA 2000).