

Building Inspections, Reserves and Related Post-Surfside Legislation for Florida Condominiums and Cooperatives

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New laws arising from the Champlain Towers South Condominium tragedy in Surfside, Florida, in June 2021, in which ninety-eight (98) lives were lost and more than one hundred-fifty (150) families displaced were passed by the Florida Legislation during its Special Session in May of this year. These new laws became effective July 1, 2022. U.S. businesses should be prepared for this new importation framework as follows:

DEADLINES

A. Reporting to the Division of Florida Condominiums

All buildings three (3) stories or higher must report the following information to the Division of Florida Condominiums, Timeshares and Mobile Homes on or before January 1, 2023.

- The number of buildings on the property that are three (3) stories or higher in height
- The total number of units in all such buildings
- The addresses of all such buildings
- The counties in which all such buildings are located

The information may be submitted to the Division by simply completing and submitting the Building Reporting Form on its website.

B. Milestone Inspection Report (MIR)

“Milestone inspection” means a structural inspection of a building, including an inspection of load-bearing walls and the primary structural members and primary structural systems. A licensed architect or engineer authorized to practice in Florida must attest to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. If the building is located within three (3) miles of a coastline, the association must have a Milestone Inspection Report (MIR) performed by December 31 of the year in which the building reaches twenty-five (25) years of age and every ten (10) years thereafter. All other buildings must have the Milestone Inspection Report (MIR) performed when the building reaches thirty (30) years of age. If the building’s Certificate of Occupancy was issued on or before July 1, 1992, the building’s initial milestone inspection must be performed before December 31, 2024. This applies to any building that is three (3) or more stories in height.

Local government is required to give notice of the need to prepare a milestone inspection report via certified mail. Within 180 days after receiving the written notice from local government, the association must complete Phase 1 of the milestone inspection.

A milestone inspection consists of two phases:

Phase 1 — A licensed architect or engineer must perform a visual examination of habitable and non-habitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If there are no signs of substantial structural deterioration to any building components under visual examination, Phase 2 of the inspection is not required.

Phase 2 — If any substantial structural deterioration is identified during Phase 1, a Phase 2 inspection may involve destructive or nondestructive testing at the inspector’s direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure.

The architect or engineer who performs the inspection must submit a sealed copy of the inspection report of the material findings and recommendations to the association, and to the local government building official. The inspection report must, at a minimum, meet all of the following criteria:

- Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection
- Indicate the manner and type of inspection forming the basis for the inspection report
- Identify any substantial structural deterioration within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration
- State whether unsafe or dangerous conditions were observed
- Recommend any remedial or preventive repair for any items that are damaged but do not constitute substantial structural deterioration
- Identify and describe any items requiring further inspection

The Board of County Commissioners may adopt an ordinance requiring that an association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a Phase 2 inspection report. Such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced within the required timeframe, the local enforcement agency must review and determine if the building is unsafe.

FLORIDA BUILDING COMMISSION REQUIREMENTS

The Florida Building Commission must review the milestone inspection requirements and make recommendations, if any, to the Florida Legislature to ensure inspections are sufficient to determine the structural integrity of a building. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2022. The Florida Building Commission must also consult with the State Fire Marshal to provide recommendations to the Florida Legislature.

STRUCTURAL INTEGRITY RESERVE STUDY (SIRS)

A new provision is the creation of a “structural integrity reserve study” (SIRS) designed to examine the structural integrity and safety of the building.

An association must have a SIRS completed at least every ten (10) years for each building on the property that is three stories or higher in height and which includes the following items:

- Roof;
- Load-bearing walls or other primary structural members;
- Floor;
- Foundation;
- Fireproofing and fire protection systems;
- Plumbing;
- Electrical systems;
- Waterproofing and exterior painting;
- Windows; and
- Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection.

A structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area. The amount to be reserved for an item is determined by the structural integrity reserve study that must be completed by December 31, 2024.

One of the most significant changes in these new laws is the loss of the right to waive funding of the items in the SIRS. Neither unit owners (nor the Board of Directors) may vote to waive reserves or fund lesser reserves for items set forth in the SIRS report.

FIDUCIARY DUTIES

The association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative

property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required by Florida law to have a website.

If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners. Such failure may also impose enormous problems with maintaining and obtaining insurance coverage.

If an association fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.

OFFICIAL RECORDS

Official records of the association now include milestone inspection reports and structural integrity reserve studies of the property. Structural integrity reserve studies and milestone inspection reports must be maintained for at least fifteen (15) years after receipt of such reports.

DISCLOSURES

The seller of a unit must provide to potential purchasers a copy of the inspector-prepared summary of the milestone inspection report and a copy of the association's most recent structural integrity reserve study or a statement that the association has not yet completed a structural integrity reserve study.

FUTURE AMENDMENTS

Various stakeholders are concerned about the impact of this new legislation. There are efforts underway to correct some aspects to it and it remains to be seen what will come of that. Dentons Cohen & Grigsby P.C. will be offering a webinar on Tuesday, October 18, 2022, where these new laws will be reviewed in greater detail.

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