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### New Law: condo safety

A Bill was adopted unanimously by the Senate on May 24, 2022 by the House on May 25, and signed into law by the Governor on May 26. Here are some of the highlights.

This new bill imposes substantial new structural safety and reserve requirements on Florida condominiums and cooperative associations. **The law is effective immediately and is intended to prevent further disasters like the Champlain Towers South collapse in Surfside, Florida.** The new requirements include:

- **Milestone Inspections.** Creation of *Fla. Stat. Ch. 553* and amendment of *Ch. 718/719*, requiring submission to local building official of periodic “milestone inspections” of load bearing walls, structural members, and structural systems, sealed by a licensed architect or engineer, for any building three or more stories in height, except for a three story building with three or fewer single-family units.
- **PHASE 1 INSPECTION** - Upon notification from enforcement agency of past-due milestone inspection, the association must submit the inspection report within 180 days. The new law requires the “local enforcement agency,” presumably the local building department, to send notice to associations of the milestone inspection requirement. The association then has 180 days to perform a “Phase 1” inspection.

SUMMARY - If a condominium building is 3 or more stories in height, a “milestone inspection” is required and **must be performed by a licensed**

**architect or engineer.** The inspection must be performed within 30 years from the date the Certificate of Occupancy ("CO") was issued for the building. However, if the building is within 3 miles of the coastline, the milestone inspection must be performed within 25 years of the CO date.

- **The Phase 1 inspection** requires the architect or engineer to perform a **visual inspection** of the property and undertake a qualitative assessment of the building's condition. If the Phase 1 inspection reveals no signs of structural deterioration, **then a "Phase 2" inspection is not required. A Phase 2 inspection is required if structural deterioration is noted.** The Phase 2 inspection may require destructive testing, at the inspector's direction
- The engineer or architect performing either a Phase 1 or Phase 2 inspection **must prepare a written inspection report. The report must be sealed and have a separate summary pointing out its material findings.** The report must be given to the association and the local building official with jurisdiction over the building.
- **IMPORTANT ASSOCIATION NOTE:** The new statute lists the minimum categories which must be addressed in the milestone inspection report, by reference to the new statutory requirement for a "structural reserve study," discussed below. The association must distribute the milestone inspection report to all unit owners, regardless of its findings. Delivery must be by mail, personal delivery, or e-mail to those who have consented to receive electronic notice. The association must also post a copy of the inspection summary in a conspicuous place on the property. The association must post the full report on its website, if the association is legally required to have a website.
- The new law gives local building officials discretion to prescribe timelines and penalties for non-compliance. County commissions may adopt ordinances establishing timelines for necessary repairs identified in a report, and such repairs must be commenced within 365 days after receiving the report.
- - **For pre-turnover condominiums and cooperatives, the developer must obtain and provide the association with a milestone inspection at turnover. THIS IS IMMEDIATE AND IMPORATNT FOR TURNOVER CONDOS**

- **For post-turnover condominiums and cooperatives with buildings with certificate of occupancies issued prior to July 1, 1992,** the initial milestone inspection is due **December 31, 2024**, and every ten years thereafter.
- For post-turnover condominiums and cooperatives with certificates of occupancy issued July 1, 1992 or after, milestone inspection due by December 31 of the year in which the building reaches:
  - 25 years of age, for buildings within 3 miles of coastline, or
  - 30 years of age, for buildings not within 3 miles of coastline
  - And every 10 years thereafter
- **Willful and knowing failure to obtain milestone inspections constitute a breach of officers and directors' fiduciary duties. POTENTIAL PERSONAL LIABILITY**
- The association must post (physically and on web site (IS THIS FOR ALL WHAT ABOUT ASSOCIATION'S THAT ARE NOT REQUIRED TO HAVE A WEBSTIER), **if applicable**) and provide a copy of the milestone inspections to each unit owner, regardless of findings.
- Allows local enforcement agencies to prescribe timelines and penalties with respect to compliance with the requirements.
- Repairs recommended pursuant to milestone inspection must commence within the earlier of 1) 365 days from submission of the report; or 2) such sooner period of time as designated by the

applicable Board of County Commissioners. Failure to perform repairs within the mandated time period requires the local enforcement authority to conduct a review to determine if the building is unsafe for human occupancy.

**Structural Integrity Reserve Studies and Mandatory Reserves.** Amendment of Fla. Stat. Ch. 718 and 719 to require all condominium and cooperative associations with any building three or more stories in height to obtain “structural integrity reserve studies” every ten years to determine remaining useful life and funds necessary for repair of future major repairs and replacement, and to fully fund reserves for such components. **MY UNDERSTANDING THIS GOES MUST BE COMPLIED WITH BY 2024 – Furthermore** The definition section of the statute adds the term “structural integrity reserve study” to the definitions included in the regulation of condominiums. The law requires that these reserve studies must be maintained as part of the official records of the association for 15 years, the same as for the milestone inspections discussed above. Renters are entitled to inspect the foregoing reports.

- Must include: INCLUDES MORE THAN BEFORE WHICH WAS JUST ROOF, PAINTING, PAVING AND ANYTING OVER 10K
  - Roof
  - **Load-bearing walls or other primary structural members**
  - Floor
  - Foundation
  - **Fireproofing and fire protection systems**
  - **Plumbing**
  - **Electrical systems**

- **Waterproofing and exterior painting**
- **Windows**
- Any other item with deferred maintenance or replacement expense in excess of \$10,000 which, if not performed would negatively impact the aforementioned components.
- **Visual inspection must be performed by licensed architect or engineer, but other “qualified” persons can perform other portions of reserve study. Deadline of December 31, 2024** for any associations which do not already have structural integrity reserve studies. **Failure to complete a structural integrity reserve study constitutes a breach of officers’ fiduciary duty.**
- Association must post structural integrity reserve studies, milestone inspections, or other structural or life safety inspections on web site (if applicable), retain in its official records for 15 years, and make available to owners and renters.
- Developers are required to provide structural integrity reserve study at turnover for each building 3 or more stories in height.
- Reserves for included structural items are mandatory and cannot be waived, reduced, or repurposed. This change will have the effect of increasing the annual assessments for owners in condominiums which do not have reserves but will decrease the likelihood of an unavailability of funds when needed
- **DBPR Enforcement Authority and Reporting Requirements.** Amendment to Fla. Stat. Ch. 718 and 719 to: IMPORATNT

- **Authorize the Division of Condominiums, Timeshares and Mobile Homes to enforce milestone inspection and structural integrity reserve studies.**
- **Require, no later than January 1, 2023,** each condominium and cooperative association to provide to the Division, and keep updated, information including:
  - The number of buildings on the condominium or cooperative property that are three 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.
- **Unit Owner Disclosure Requirements.** Amendment to Fla. Stat. Ch. 718 and 719 to require the developer to disclose to purchasers the milestone inspections and structural integrity reserve studies, and providing that subsequent purchasers are entitled to obtain such materials at their expense (without exclusion to other documents identified in the statute). Amendment to Fla. Stat. Ch. 718 and 719 to require the developer to include the milestone inspections and structural integrity reserve study in the prospectus filed with the Division.

Additional statutory amendments are possible in future legislative sessions, as Senate Bill 4 directed the Florida Building Commission to consult with the Florida Fire Marshall and prepare recommendations to the governor by December 31, 2022. Given the impending deadlines, condominium and cooperative associations should not delay in ensuring compliance with the new statutory requirements.