



Florida's Condominium and Structural Safety Law – 2022 Legislative Update

After failing to pass legislation during the 2022 regular legislative session in response to the Champlain Tower tragedy, Florida's legislature used an emergency legislative session intended to address Florida's insurance crisis to pass building safety legislation for condominiums and cooperatives. [House Bill 5D](#) passed the Senate 38-0, and the House 110-0. Governor DeSantis signed the bill into law on May 26, 2022.

The new laws primarily address mandatory structural inspections and reserves for condominiums and cooperatives with buildings three stories or greater in height. The following is a summary of the laws:

Reporting Requirements Applicable to All Condominiums and Cooperatives

On or before January 1, 2023, all condominiums and cooperatives that are in existence as of July 1, 2022, must provide the following to the Department of Business and Professional Regulation, Division of Condominiums, Timeshares, and Mobile Homes ("DBPR"):

1. The name of the condominium or cooperative;
2. The total number of buildings that have 3 stories in height or higher;
3. The total number of units in all such buildings;
4. The counties where the buildings are located and the physical address for each building.

Any changes to this information must be reported to DBPR within 6 months of the change. DBPR will be publishing a form for providing this information on its website that must be delivered to DBPR by mail, e-mail, or hand delivery.

Milestone Inspection Requirements

Condominium or cooperative buildings 3 stories or higher must conduct a structural inspection of such buildings, including an inspection of load-bearing walls and the primary structural components and systems.

The structural inspection of the building must be performed by a licensed architect or engineer attesting to:

1. Life safety and adequacy of the structural components of the buildings;
2. General structural condition of the building affecting life safety; and
3. Any necessary maintenance, repair, or replacement of any structural components of the building.

Local enforcement agencies will be required to determine and notify condominium and cooperative associations if they require a milestone inspection. The milestone inspection must be completed within 180 days of receipt of such notice. Completion of phase one occurs when the engineer or architect submitted the inspection report to the local enforcement agency.

Deadline to Complete Inspection

All condominium and cooperative buildings must complete a milestone inspection by December 31st of the year the building reaches 30 years of age from the building's original receipt of its certificate of occupancy, and every 10 years thereafter. **Therefore, buildings with certificates of occupancy on or before July 1, 1992, must complete the inspection before December 31, 2024.**

Deadline to Complete Inspection for Buildings Within 3 Miles of Coastline

All condominium and cooperative buildings within three (3) miles of the coastline must complete inspections by December 31st of the year in which the building reaches 25 years of age, and every 10 years thereafter. **Therefore, buildings within 3 miles of coastline with certificates of occupancy on or before July 1, 1997, must complete the inspection before December 31, 2024.**

Certificate of Occupancy Not Available

If the certificate of occupancy issuance date is not available, the date of occupancy shall be that which is evidenced in any record of the local building official.

Exceptions

The inspection requirement does not apply to single, two, or three family dwellings with 3 or fewer habitable stories above ground.

Milestone Inspections – Two Phases:

Phase 1

A phase 1 inspection consists of a visual examination by an architect or engineer of the habitable and non-habitable areas of a building, including the major structural components of a building, and provides a qualitative assessment of the structural conditions of the building. The architect or engineer must issue a report to the local building enforcement agency.

If the architect or engineer does not find signs of “substantial structural deterioration” to any building components under visual examination a phase two inspection is not required. If the Phase 1 inspection revealed “substantial structural deterioration” to any building components a Phase 2 inspection is required.

“Substantial structural deterioration” is defined as substantial structural distress that negatively affects the building’s general structural condition and integrity.

Phase 2

A Phase 2 inspection may involve either destructive or nondestructive testing, or both, at the discretion of the inspector. The inspection must be as extensive as necessary to assess areas of structural distress in order to confirm that the building is structurally sound and safe, and to recommend a program for fully assessing and repairing distressed and damaged portions of the building.

However, 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.

Inspection Report

The inspector must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations. The inspection report must, at a minimum, meet all of the following criteria:

1. Bear the seal and signature of the licensed engineer or architect who performed the inspection.
2. Indicate the manner and type of inspection forming the basis for the inspection report.
3. 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.
4. State whether unsafe or dangerous conditions were observed.
5. Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.
6. Identify and describe any items requiring further inspection.

Associations must commence repairs for substantial deterioration within 365 days after receiving the report and must submit proof to the appropriate governmental agency of commencement or completion of such repairs to the local enforcement agency. Associations that fail to comply with the required timeframe for repairs are subject to further review by the local enforcement agency, which will determine if building is unsafe for human occupancy.

Associations must distribute a copy of the inspector-prepared summary of the inspection report to each condominium or cooperative unit owner, regardless of the findings or recommendations in the report; post a copy of the inspector-prepared summary in a conspicuous place on the property; and must publish the full report and inspector prepared summary on the association's website for all condominiums required to have a website. The milestone inspection report will be an official record of the association and must be kept for at least 15 years. Renters may inspect and copy the reports.

Structural Integrity Reserves Study ("SIRS")

All unit owner-controlled condominiums and cooperatives with buildings of 3 or more stories existing on or before July 1, 2022, **must complete a SIRS by December 31, 2024**, and at least once every 10 years thereafter.

Who Can Perform SIRS

The SIRS may be performed by any person qualified to perform such study. However, visual inspection portion of study must be performed by licensed engineer or architect.

SIRS Components

At a minimum, a SIRS must include a study of the following items as related to the structural integrity and safety of the building:

1. Roof
2. Load-bearing walls or other primary structural members
3. Floor
4. Foundation
5. Fireproofing and fire protection systems
6. Plumbing
7. Electrical systems
8. Waterproofing and exterior painting
9. Windows
10. 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 above components

SIRS Criteria - The SIRS must:

1. Identify the common areas being visually inspected;
2. State the estimated remaining useful life;
3. State the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected; and
4. 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.

A copy of the SIRS is considered an official record open to inspection, must be posted on the website for all condominiums required to have one, and must be kept by the association for 15 years.

Funding of Reserves and Prohibition on Waiving or Reducing Reserves

The amount to be reserved for an item is determined by the association's most recent SIRS that must be completed by December 31, 2024.

If the condominium building is less than three stories the law requires that "in addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000."

Importantly, effective December 31, 2024, associations may NOT vote to waive or reduce fully funding reserves for SIRS building components. They are also prohibited from voting to use such reserves for any other purpose. As the statute is currently drafted, this arguably applies to ALL condominiums and cooperatives, regardless of size or location.

Statutory Liabilities

Failure to Obtain Milestone Inspection

If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed, such failure is a breach of fiduciary relationship to the unit owners.

Failure to Obtain SIRS

If the officers or directors of an association willfully and knowingly fail to have a SIRS performed, such failure is a breach of fiduciary relationship to the unit owners.

Manager Duties

If a manager or management firm has a contract with an association that is subject to milestone inspection, the manager or management firm must comply with the requirements of performing such inspection as directed by the board.

Regulatory Enforcement

DBPR and local enforcement agencies have the power to enforce compliance regarding completion of the milestone inspection reports, structural integrity reserve studies, and reserve funding. DBPR may also enforce rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units, and complaints related to the procedural completion of milestone inspections.

Counties may require that a condominium or cooperative association schedule or commence repairs for substantial structural deterioration within a specified timeframe. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

The Florida Building Commission must review the milestone inspection requirements and make recommendations, if any, to the legislature to ensure inspections are sufficient to determine the structural integrity of a building.

The Florida Building Commission must consult with the State Fire Marshal to provide recommendations to the legislature for the adoption of comprehensive structural and life safety standards for maintaining and inspecting all types of buildings and structures in this state that are three stories or more in height.

Developer Requirements

Developers of any building that is 3 stories or more in height must complete a SIRS and provide it to the association before turnover. Developer-controlled associations may no longer vote to waive or reduce reserves during the first two years of the association.

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