



**2022 STATUTORY CHANGES
AFFECTING CONDOMINIUM AND COOPERATIVE ASSOCIATIONS
AND COMMUNITY ASSOCIATION MANAGERS MANAGING
CONDOMINIUMS AND COOPERATIVES**

This memorandum is furnished without charge to our community association clients.

The information in this update is a summary of recent changes in Florida Statutes. It is intended to provide general information and is not intended as legal advice to your particular community association. You are urged to contact your association's attorney regarding the specific applicability of this information to your association.

At the end of each paragraph, we state in brackets [] the effective date, the applicable Statute being changed or created, and the Senate Bill creating the change.

Prepared by Robert Burr, Esq., Florida Bar Board Certified in Condominium and Planned Development Law. References to the "Statute" refer to the applicable statute being amended. References to the "Division" refer to the Division of Florida Condominiums, Timeshares and Mobile Homes.

I. CHANGES AFFECTING CONDOMINIUM BUILDINGS: The Florida Legislature has, in response to the Surfside tragedy, imposed requirements to help ensure the structural integrity of condominium buildings. These are contained in Senate Bill 4-D.

Milestone Inspections: A condo association is required to have a "milestone inspection" performed for **each building that is 3 stories in height or greater** pursuant to the schedule set forth below.

A "milestone inspection" means a structural inspection of the building, including an inspection of load-bearing walls and the primary structural members and primary structural systems as those terms are defined by statute, by a licensed architect or engineer authorized to practice in Florida for purposes of attesting to the life safety and adequacy of structural components of the building and to the extent reasonably possible

determining the general structural condition of the building as affects the safety of the building.

1. If a building is located within 3 miles of the coastline, the association must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the certificate of occupancy, and every 10 years thereafter.

2. If the building is located more than 3 miles from the coastline, the association must have the milestone inspection performed by December 31 of the year in which the building reaches 30 years of age based on the certificate of occupancy, and every 10 years thereafter.

3. 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.

4. If the date of issuance of the certificate of occupancy is not available, the date the building was occupied, as evidenced by the local building official, shall be the date which determines the time by which the milestone inspections must be performed.

5. The local enforcement agency must provide written notice of such required inspection to the condo association by certified mail.

6. Milestone inspections consist of Phase 1 and Phase 2 milestone inspections.

7. Within 180 days after receiving the required notice from the local enforcement agency, the condo association must complete a **"Phase 1" milestone inspection** and submit that Phase 1 milestone inspection to the local enforcement agency.

8. A Phase 1 milestone inspection means that the architect or engineer performs a visual inspection of the habitable and non-habitable areas of the building including the major structural components and provides a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components, Phase 2 of the inspection is not required.

9. A **"Phase 2" milestone inspection** is required and must be performed if any **"substantial structural deterioration"** is identified in Phase 1.

10. **"Substantial structural deterioration"** means substantial structural distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such

surface imperfections are a sign of substantial structural deterioration.

The Phase 2 inspection report must identify any “substantial structural deterioration” within a reasonable professional probability, describe deterioration, and identify recommended repairs. The Phase 2 report must state whether unsafe or dangerous conditions exist. The Phase 2 report must recommend any remedial or preventative repair. The Phase 2 report must identify and describe any items requiring further inspection.

11. An inspector who completes a Phase 2 milestone inspection shall prepare and submit to the local building official and the association, an inspection report with a separate summary of the material findings and recommendations in the inspection report.

12. The association must distribute a summary (prepared by the inspector) of the inspection report to the unit owners by U.S. mail or personal delivery and by electronic transmission if consent is received; the association must conspicuously post a copy at the condominium. The association must publish the full report on the association's website if the association is required to have a website.

13. The local county may adopt an ordinance requiring the association to schedule or commence repairs for substantial structural deterioration within a specific timeframe after receipt of the Phase 2 inspection report; however, such repairs must be completed within 365 days after receiving the Phase 2 report.

14. If the association fails to submit proof to the local enforcement agency that repairs have been scheduled or commenced for substantial structural deterioration identified in a Phase 2 inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for occupancy.

15. If the association contracts with a community association manager or community association management firm, the manager and management firm are required to comply with these requirements as directed by the association's board.

16. A renter has the right to inspect and copy the milestone inspection reports.

[Effective July 1, 2021; applicable Statutes F.S. 553.899; 468.4334; 718.111(12); Bill reference SB 4-D]

Structural Integrity Reserve Study: A condo association operating a **building that is 3 stories or higher** is required to have a “structural integrity reserve study” completed at least every 10 years after the creation of the building.

1. The “structural integrity reserve study” must include:

- (a) roof
- (b) load-bearing walls or other primary structural members
- (c) floor
- (d) foundation
- (e) fireproofing and fire protection systems
- (f) plumbing
- (g) electrical systems
- (h) waterproofing and exterior painting
- (i) windows
- (j) any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00 and the failure to maintain or replace such item negatively affects these items listed, as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

The issue of windows immediately presents itself – in many or even most condos, the association is not under the declaration responsible to maintain windows.

2. A “structural integrity reserve study” means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by a licensed engineer or licensed architect. At a minimum, 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.

3. Associations operating buildings 3 stories or higher must have the structural integrity reserve study completed by December 31, 2024. If an association fails to complete a structural integrity reserve study, such failure is a breach of the officer’s and director’s fiduciary relationship.

4. Structural Integrity Reserves. An association’s budget must include reserves for items determine by the association’s most recent “structural integrity reserve study”. If the amount to be reserved for an item is not in the association’s structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must be computed based on the remaining useful life and estimated replacement cost.

Please note that it is unclear in the new language whether the requirement of maintaining “structural integrity reserves” applies only to buildings 3 stories in height or higher or all condominium buildings. Hopefully this issue will be resolved by further refinements in the statute or by a directive from the Division.

5. Effective December 31, 2024, the unit owners may not waive or partially fund reserves for repairs required to be done under the structural integrity reserve study. Further, the unit owners may not vote to approve use of structural integrity reserves for a different purpose. Please note that this restriction includes reserves for the roof.

** Please note that it is unclear in the new language prohibiting waiver and limiting use of “structural integrity reserves” applies only to buildings 3 stories in height or higher or all condominium buildings. Hopefully this issue will be resolved by further refinements in the statute or by a directive from the Division.**

6. The structural integrity reserve study is part of the official records and must be maintained for at least 15 years after prepared. [Effective July 1, 2021; applicable Statutes F.S. 718.103(25); 718.111; 718.112; Bill reference SB 4-D]

Authority of the Division of Florida Condominiums, Mobile Homes and Timeshares: The Division has authority to enforce complaints relating to procedural completion of the milestone inspections and the procedural completion of the structural integrity reserve study requirements.

Condo associations are required by January 1, 2023, to provide information to the Division in writing, on a form posted on the Division’s website regarding the number of buildings 3 stories or higher; the number of units in the buildings; the addresses of such buildings; and the counties in which such buildings are located. The Division is required to compile a list of the buildings that are 3 stories or more in height that is searchable by county and must post a list on the Division’s website. [Effective July 1, 2021; Applicable Statute F.S. 718.501; Bill reference SB 4-D]

Unit Owner Disclosure at Sale of Unit: The buyer of a unit is entitled at seller’s expense to a copy of the summary of the milestone inspections and the structural integrity reserve study. [Effective July 1, 2021; Applicable Statute F.S. 718.503; Bill reference SB 4-D]

II. CHANGES AFFECTING COOPERATIVE BUILDINGS: The same changes stated above for condominiums are also made for cooperative buildings. The relevant Statutes in Chapter 719 governing cooperative associations are F.S. 719.103; 719.104; 719.106; 719.301; 719.501; 719.503.

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