



BRAVURA NEWS

A NEWSLETTER FOR THE RESIDENTS OF THE BRAVURA CONDOMINIUM ASSOCIATION

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BRAVURA I CONDOMINIUM

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Condominium/Cooperative

Structural Safety Bill Signed May 26, 2022

The Florida Legislature has recently completed a special session aimed at Condominium and Cooperative structural safety in the wake of the Champlain Towers collapse in Surfside. While this was to be passed as part of the regular legislative session, the legislature's failure to act resulted in the banks and insurance companies acting. We are all dealing with those ramifications. A special session was convened by the legislature to pass Senate

Bill 4-D which was recently signed by Governor Desantis. As we expected, the new law imposes wide sweeping changes for structural safety of condominiums and cooperatives including inspections and studies, reserve funding and places the burden on the Board of Directors. ***Failing to complete the mandatory inspections and/or failing to fund proper reserves pursuant to a reserve study could constitute a breach of the officers or directors' fiduciary duties.***

Mandatory Structural Inspections

The bill mandates statewide structural inspections of condominium and cooperative buildings and requisite milestone inspections for buildings that are over three (3) stories or more in height.

Most importantly, this new bill sets forth that the failure to complete mandatory milestone inspections can constitute a breach of an officer's or directors' fiduciary duties.

The inspections are broken into several phases.

- **For buildings located more than 3 miles from the coastline:** Condominium and Cooperative Associations must have a milestone inspection performed for each building that is three (3) stories or more in height by December 31st of the year the building reaches 30 years of age (based on the date of certificate of occupancy) and every 10 years thereafter.
- **For buildings located within three miles from the coastline:** Condominium and Cooperative Associations must have a milestone inspection performed for each building that is three (3) stories or more in height by December 31st of the year the building reaches 25 years of age (based on the date of certificate



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of occupancy) and every 10 years thereafter.

- **For buildings constructed on or before July 1, 1992 and presently more than 30 years old:** An initial milestone inspection must be performed before December 31, 2024.

The local municipalities will be responsible for notifying the Association of the need for compliance with Phase One inspections within 180 days of the notice. The Association is still ultimately responsible and should start working on towards it regardless of any notice by the City. Due to the engineer, contractor and material supply limitations, Associations should begin planning to adhere to the deadlines.

Phase One requires a licensed engineer or architect to perform a visual examination of the building(s), including major structural components and provide a qualitative assessment. If no deterioration is found, a Phase Two inspection is not required. However, since finding Engineers to perform is more difficult due to the substantial increase in demand, it is imperative that the association start the process if your buildings inspection deadline is due.

If the engineer or architect determines that structural deterioration is present, a **Phase Two** inspection must be performed. This may include destructive and non-destructive testing. The inspection may be as extensive or limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound.

Upon completion of **Phase One** or **Phase Two** milestones, the engineer must issue a sealed report indicating manner and type of inspection, identifying any substantial structural deterioration, state whether any unsafe or dangerous conditions exist, recommend whether remedial or preventative repairs are required, or identify other items requiring further inspection. Copies of the report must be distributed to each unit owner by mail or hand delivery, or email to those unit owners who have consented to receive notice by email. Copy of the report must also be put on the Association website if the Association is obligated by the Condominium or Cooperative Act to have a website.

After a **Phase Two** inspection is complete, the condominium or cooperative association must schedule or commence repairs for structural repairs no later than one (1) year after issuance of the report. However, please be aware

of the fact that County Commissioners may adopt ordinances setting forth shorter time frames for repairs and most recently, the cities are refusing to provide additional extensions so Associations cannot rely on more time and need to act expeditiously.

Presently, for those Cooperative and Condominium Associations in Broward and Dade County Florida, those counties have yet to change their 40 year certification programs in response to this bill. Therefore, it will be interesting to see how these existing programs are modified in response to these bills.

Structural Integrity Reserve Studies

The bill also substantially changes the funding of reserve requirements. The bill mandates that structural integrity reserve studies be completed for future major repairs for any condominium or cooperative building over three (3)

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stories in height. *Failure to complete the required reports shall constitute a breach of an officer or directors fiduciary duty.* The first report must be completed by **December 31, 2024.** Thereafter, the reserve study must be completed at least every 10 years. The reports must be maintained for at least 15 years after completion of the study.

The structural reserve study may be performed by any person qualified to perform the study, however, the visual inspection portion of the structural integrity reserve study must be performed by an engineer or licensed architect.

The report must state the estimated replacement costs, estimated remaining useful life, and provide recommended annual reserve amounts to achieve proper funding of structural reserves for the following minimum structural components:

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

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8. Waterproofing and exterior painting
9. Windows
10. Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00 and the failure to replace or maintain it negatively affects the items listed in 1-9 above as determined by the engineer or architect.

Effective December 31, 2024, members of all unit owner controlled association may not waive reserves or provide less than full funding of reserves for structural items. Additionally, unit owners may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the intended purpose.

The bill also places requirements on Developers to establish an initial reserve study for newly constructed condominiums and cooperatives and prohibits the waiver of reserve funding by the Developer prior to turnover.

Miscellaneous

The bill mandates that all condominiums and cooperatives notify the Division of Condominiums and provide the following information:

1. Name of the Association with buildings more than three (3) stories in height.
2. The number of such buildings on Association Property.
3. Addresses of all such buildings.

The bill also makes changes to Florida Building code, which previously mandated roof systems be brought up to code if more than 25% of the roofing system was replaced. Previously, once the 25% threshold was reached, the entire roofing system had to be brought up to code. Now, if the roof presently meets the 2007 Florida Building Code, and 25% or more of the roof section is repaired, replaced, or recovered, only the repaired, replaced or recovered portion is required to be constructed in accordance with the current Florida Building Code. This was done partially to help stabilize Florida’s insurance market where some unscrupulous roofers were utilizing the 25% threshold to require entire roof replacements.

This bill is sure to have a substantial effect on Condominiums and Cooperatives within the state. Our Firm anticipates that further tweaks and requirements may come in the 2023 legislative session next year. Nonetheless, it is best that Associations begin planning for the funding and construction requirements to avoid being accused of breaching their fiduciary responsibility to the Association.

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