

CONDOMINIUM SAFETY: States Are Taking Action

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Learning comes from experience, and when it comes to condominium and cooperative association (“association”) safety, states are taking action based upon what they have learned. Florida is leading the way with a new law which requires associations to take action to maintain their buildings’ structural integrity and financially prepare for major repairs all in the hope that it will prevent another tragedy like the June 24, 2021, Surfside condo collapse.

On May 26, 2022, Governor Ron DeSantis signed into law a bill which sets new structural integrity recertification requirements for associations located in Florida. It reflects the Florida Legislature’s finding that it was necessary to implement a state wide “structural inspection program.” The new law requires that a building which is three or more stories high be recertified as structurally sound 30 years after completion, and then again every ten years. If the building is within three miles of the coastline, then the initial recertification must take place within the year that the building turns 25 years old.

Under the new law, the inspection must be conducted by a licensed architect or engineer. It is the condo association’s responsibility to arrange for the inspection, cover its costs, and confirm compliance with the inspection requirements. The inspection report must be provided to each homeowner by mail or personal delivery. Electronic delivery is permissible if the homeowner previously agreed to such method of communication. In addition, the report must be published on the association’s website if it is required to maintain such a site.

The law also requires that the association must complete a structural integrity reserve study at least every 10 years after the building’s completion if the building is three stories or higher and must include, at the least, a study of the roof, load-bearing walls, floor, foundation, fireproofing, plumbing, electrical systems, waterproofing, exterior painting, windows and any other item that has a deferred maintenance expense or replacement cost of more than \$10,000. A

structural integrity reserve study is defined within the bill as a study of the amount of money needed to be set aside for future major repairs and replacement of the common areas, as determined by a visual inspection performed by a licensed engineer or architect. The law does not go into effect until 2024, giving associations time to determine how best to comply with the law and create a plan to do so.

Why these changes? Although recertification requirements are not new in Florida, prior to the passage of the new law, recertification was not a state wide obligation and because of this, associations were able to put off necessary repairs often due to financial concerns, leading to worsening conditions. Now, with the new law, recertification is a Florida-wide requirement as is the obligation that the association financially plan for major repairs required to keep the building in a safe and livable condition. As such, the new law makes it a breach of their officers’ and directors’ fiduciary duty to homeowners should the association not do so. In effect, the law forces communities to save for future repairs. Therefore, it would be helpful to discuss these changes with an attorney to determine what steps may be taken now, in order to be in compliance with the new law by the determined date and to allow enough time to obtain funds to cover the associated costs.

Florida is not the only state to take action. Maryland recently passed new law requiring condominiums, homeowner associations, and housing cooperatives on a blanket basis, to conduct reserve studies of common areas regularly. Previously, only two Maryland counties out of 23 had such a requirement. Colorado and Connecticut also introduced legislation in 2022 with the intent to regulate reserves, but they ultimately failed to pass. Georgia, Hawaii and Tennessee adjourned their legislative sessions prior to passing any new reserve laws. Virginia introduced legislation focused on building inspections and structural integrity this year, which did successfully pass, with Virginia creating a study program that will analyze structural integrity and reserves.

These state initiatives are most likely only the beginning of governments taking steps to actively direct the care and maintenance of communities' physical structures in order to protect inhabitants and prevent another situation like Surfside. The failure of some states to enact legislation will likely not prevent them from trying again, as illustrated by Florida's June 2022 legislation so soon after a March 2022 failure. Thus, it is important to stay aware of the changing laws so that you, as a board member, know what is required to keep the community in compliance with the law. As always, your association's legal counsel will be a valuable resource.

Though it remains to be seen how new state legislation and the changing expectations for safety will impact associations, these developments reinforce the importance of staying on top of the association's financial reserves and the physical state of its facilities.

As we all wait to see what additional legislation is passed, we should heed the action the Florida legislature took and use it as a guide for what may be expected of associations in the future in other states as well. Start the conversation with your association's attorney to determine what steps may be taken now to plan for the future. As Florida associations are seeing, there is much to consider in conducting structural integrity studies and building sufficient reserves to address expected and unexpected expenses, making time a valuable commodity.



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Additional Resources

¹ Brendan Farrington, *Florida Gov Signs Condo Safety Bill After Building Collapse*, Associated Press (May 26, 2022), <https://www.usnews.com/news/us/articles/2022-05-26/desantis-signs-bill-addressing-safety-after-condo-collapse>

² SB 4D – Building Safety Act, Florida Statute, Section 553.899 Section 3.

³ SB 4D – Building Safety Act, Florida Statute 718.112 Section 6.(g)1, line 1050.

⁴ See [Reserve Article](#)

⁵ Dawn Bauman, *Florida Lawmakers Pass Condominium Safety Legislation* (May 27, 2022), <https://advocacy.caionline.org/florida-lawmakers-pass-condominium-safety-legislation/>

⁶ https://mgaleg.maryland.gov/2022RS/Chapters_noln/CH_664_hb0107e.pdf

⁷ Raymond D. Burke, *Maryland General Assembly Passes Bill Requiring Reserve Studies* (April 22, 2022), <https://www.marylandcondolaw.com/maryland-general-assembly-passes-bill-requiring-reserve-studies/>.

⁸ Phoebe E. Neseth, Esq., *Condominium Safety State Legislative Mid-Year Update*, Community Associations Institute (June 2, 2022).

⁹ Id.

¹⁰ Brendan Farrington, *Florida Gov Signs Condo Safety Bill After Building Collapse*, Associated Press (May 26, 2022), <https://www.usnews.com/news/us/articles/2022-05-26/desantis-signs-bill-addressing-safety-after-condo-collapse>

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