

BUILDING SAFETY ACT FOR CONDOMINIUM AND COOPERATIVE ASSOCIATIONS



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On May 26, 2022, Governor Ron DeSantis signed SB-4D. SB 4-D, titled the “**Building Safety Act for Condominiums and Cooperative Associations**”, passed unanimously through both the House and the Senate. Notably, this new law does NOT apply to homeowners associations (“HOAs”) regulated under Chapter 720, Florida Statutes. The following is a brief summary of the 88-page bill. The affected condominium and cooperative associations should start planning now regarding how to address and pay for these new statutory requirements. Please consult with your association’s attorney for guidance.

1. MILESTONE INSPECTIONS.

If a condominium or cooperative building is three (3) or more stories in height, a “**Milestone Inspection**” is now mandated by Section 553.899, Florida Statutes. Section 553.899(2)(a), Florida Statutes defines a Milestone Inspection to mean a structural inspection of a building, including an inspection of load-bearing walls and the “primary structural members” and “primary structural systems”, as those terms are defined in Section 627.706, by an architect or engineer licensed to practice in the state of Florida.

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The purpose of the Milestone Inspection is to attest to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. This requirement does not apply to a single-family, two-family, or three-family dwelling with three (3) or fewer habitable stories above ground.

Due Date(s) for Milestone Inspections.

30 Years and Every 10 Years Thereafter. The association must arrange to have the Milestone Inspection performed by December 31st of the year in which the building reaches thirty (30) years of age, based on the date the certificate of occupancy (“CO”) was issued for the specific building, and every ten (10) years thereafter.

25 Years and Every 10 Years Thereafter. However, if the building is located within three (3) miles from the “coastline”, as that term is defined in Section 376.031, Florida Statutes, the Milestone Report must be performed by December 31st of the year in which the specific building reaches twenty-five (25) years of age, based on the date the CO was issued for the specific building, and every ten (10) years thereafter.

Buildings Older Than July 1, 1992. If the CO for the specific building was issued prior to July 1, 1992, then the initial Milestone Inspection must occur by December 31, 2024.

Written Notice from Enforcement Agency. Upon determining that a building must have a Milestone Inspection, the local enforcement agency must provide written notice of the required inspection to the association by certified mail, return receipt requested. Upon receipt of the notice, the association has 180 days to complete a “Phase 1 Visual Inspection”.

Phase 1 Inspection. During the Phase 1 Inspection, a licensed architect or engineer must visit and perform a visual inspection of the property. The Inspector must perform a visual examination of habitable and non-habitable areas of a building, including the major structural components of a building and provide a qualitative assessment of the structural condition of the building.

The licensed architect or engineer (“Inspector”) must present the Phase 1 Inspection in the form of a written inspection report to the association and the local building official. The Phase 1 Inspection report must be under the seal of the Inspector and have a separate summary pointing out its material findings. The association is required to provide a copy of the Inspector prepared a summary to all unit owners and post a copy in a conspicuous place on the property. If the association is statutorily required to have a website, the Inspector prepared summary must be posted on the website.

If the Inspector finds signs of substantial structural deterioration to any building components under visual examination, then a “Phase 2 Inspection” is required.

Section 553.899(2)(b), Florida Statutes, defines “substantial structural deterioration” to mean 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 1

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Inspection or Phase 2 Inspection determines that such surface imperfections are a sign of substantial structural deterioration.

Phase 2 Inspection. If the Inspector identifies any substantial structural deterioration, a Phase 2 Inspection is mandatory. A Phase 2 Inspection may involve destructive or non-destructive testing, at the Inspector's discretion. The Phase 2 Inspection must be presented in the form of a written inspection report to the association and the building official. The Phase 2 Inspection report must be under the seal of the Inspector and have a separate summary pointing out its material findings. The association is required to provide a copy of the Inspector prepared summary to all unit owners and post a copy in a conspicuous place on the property. If the association is statutorily required to have a website, the full report and Inspector prepared a summary of the material findings must be posted on the website.

Compliance. The local enforcement agency may prescribe timelines and penalties concerning compliance with these new requirements. Additionally, the board of county commissions may adopt an ordinance requiring the association to schedule or commence repairs for substantial structural deterioration within a specified timeframe after the receipt of a Phase 2 Inspection report; however, such repairs must be commenced within 365 days after receiving the report. If the association fails to submit proof that repairs have been scheduled or have 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 human occupancy.

If the officers or directors of an association willfully and knowingly fail to have a Milestone Inspection performed, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners. Please check with the association directors' and officers' ("D&O") insurance carrier if it provides defense or coverage for willful and knowing statutory violations.

Developer Turnover Documents. Notwithstanding when the CO was issued or the height of the building, the developer shall deliver to the association along with the other turnover documents, at the developer's expense, a Milestone Inspection report, a copy of the Inspector prepared summary of the Milestone Inspection report and a copy of the most recent SIRS. The developer is also required to provide these documents to the initial purchaser of the unit from the developer.

DBPR Authority. Section 718.501(1), Florida Statutes, was amended to expand the jurisdiction of the Department of Business and Profession Regulation ("DBPR") to include complaints related to the procedural completion of the Milestone Inspection(s) under Section 553.899 and the SIRS under Section 718.112)(2)(g).

Reporting Requirements. On or before January 1, 2023, associations existing on or before July 1, 2022, must provide the following information to the DBPR:

1. The number of buildings on the condominium property that are three stories or higher in height.
2. The total number of units in all such buildings.
3. The address of all such buildings.
4. The counties in which all such buildings are located.

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An association must provide an update in writing to the DBPR if there are any changes to the information in the list above within six months after the change.

2. Structural Integrity Reserve Study (“SIRS”). Sections 718.103(25) and 719.103(24), Florida Statutes, now require the condominium or cooperative association to obtain a **Structural Integrity Reserve Study (“SIRS”)**. The relevant statutes define SIRS to mean:

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 SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed by an engineer... or an architect.... At a minimum, a SIRS 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 area 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.

Official Records. The Phase 1 Visual Inspection Report, Phase 2 Inspection Report, and the SIRS are official records of the association and must be maintained for at least 15 years after the study is completed or receipt of the report. A renter has the right to inspect and copy these reports. If the association is required to have a website, then these documents must also be posted on the website.

Reserves. Before turnover of control of an association by a developer, the developer-controlled association may not vote to waive reserves or reduce the funding of 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 amount to be reserved for an item is not in the association’s initial or most recent SIRS or the association has not completed a SIRS, the amount must be completed by using a formula based upon estimated remaining life and estimated replacement cost or deferred maintenance expense of the reserve item. The members of a unit owner-controlled association may determine, by a majority vote at a duly-called meeting of the association, to provide no reserves or less reserves than required by statute. **Effective December 31, 2024, members of a unit owner-controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other than their intended purpose. Effective December 31, 2024, the members of a unit owner-controlled association may not determine to provide no reserves or less reserves than required by statute for the items listed below:**

(g) Structural Integrity Reserve Study.—

1. An association must have a SIRS completed **at least every 10 years** after the condominium’s creation for **each building on the condominium property that is 3 stories or higher in height** which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

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- 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 costs that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed in subparagraphs a. – i., as determined by the licensed engineer or architect performing the visual inspection portion of the SIRS.

Developer SIRS. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a SIRS completed for each building on the property that is three (3) stories or higher in height.

Unit Owner Disclosure to Buyer. Each unit owner who is not a developer must comply with the requirements of Section 718.503(2), Florida Statutes before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a unit is entitled, at the seller's expense, to a current copy of numerous documents, now including a copy of the summary of the Milestone Inspection report and the association's most recent SIRS or a statement that the association has not completed the SIRS.

Deadline. As to associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, they must have a SIRS completed by December 31, 2024, for each building on the property that is three stories or higher in height.

Compliance. If an association fails to complete a SIRS, such failure is a breach of an officers' and directors' fiduciary relationship to the unit owners.

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