

New Florida Bill Concerning Recertification of Condominiums

Florida will now require statewide recertification of condominiums over three stories tall under a new law signed by Governor Ron DeSantis. Passage of the measure comes nearly a year after the June 24, 2021 collapse of the Champlain Towers South condo in Surfside which killed 98 people.

Under the new law re-certification would be required after 30 years, or 25 years if the building is within 3 miles of the coast, and then certification would be required every 10 years thereafter. The Champlain Towers South was 40-years-old and was going through the 40-year-recertification process required by Miami-Dade County when it collapsed last June.

Both the Florida House and Senate voted unanimously to pass SB 4-D during the just concluded special session.

SB 4-D – Building Safety

The bill requires the Florida Building Code to provide that when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work need be constructed in accordance with the current Florida Building Code in effect at the time of such work. This new provision applies only to roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or subsequent editions. The provision revises the current Florida Building Code which requires that not more than 25 percent of the total roof area or roof section, of any existing building or structure, may be repaired, replaced, or recovered in any 12-month period—unless the entire existing roofing system or roof section conforms to the current requirements of the Code.

The bill also provides building safety inspection requirements for condominium and cooperative association buildings, increases the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revises the requirements for associations to fund reserves for the continued maintenance and repair of such buildings.

Regarding building safety inspections, the bill:

- Requires condominium and cooperative association buildings that are three or more stories in height to have a “milestone inspection” of the buildings’ structural integrity by an architect or engineer when a building reaches:
 - 30 years of age and every 10 years thereafter, or
 - 25 years of age and every 10 years thereafter if the building is located within three miles of a coastline.
- Requires, if a milestone inspection is required and the building’s certificate of occupancy was issued on or before July 1, 1992, the building’s initial milestone inspection to be performed before December 31, 2024.
- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Requires a phase two milestone inspection if there is evidence of “substantial structural deterioration” as determined by a phase one inspection.
- Specifies the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the associations, and requires an inspector-prepared summary to be provided to unit owners by mail and by email to unit owners who have consented to receive notices by email.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.
- Requires the Florida Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill and inspection for other types of buildings and structures that are three stories or more.

- Provides that a willful and knowing failure by an officer or director of an association to have a milestone inspection performed is a breach of the officer's and director's fiduciary relationship to the unit owners.
- Gives unit owners the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety, and gives renters the right to inspect the milestone inspection reports.
- Requires the developer's turnover inspection report to comply with the milestone inspection requirements.
- Requires associations to report to the Florida Division of Condominiums, Timeshare, and Mobile Homes (division) the number of buildings that are three stories or higher in height and the total number of units in such buildings on or before January 1, 2023, and requires the division to publish that information on its website.
- Requires developer and non-developer unit owners to give prospective buyers of a unit a copy of the inspector-prepared summary of the milestone inspection report.
- Extends the jurisdiction of the division to investigate complaints to include complaints related to the procedural completion of milestone inspections.

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, the bill:

- Requires condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.
- Requires associations existing on or before July 1, 2022, that are controlled by non-developer unit owners to have a structural integrity reserve study completed by December 31, 2024.
- Defines "structural integrity reserve study" as a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Requires the study to include a visual inspection, state the estimated remaining useful life, and the estimated replacement cost of the roof, load bearing walls or other primary structural members, floor, foundation, fireproofing and fire protection systems, plumbing, and any item with a deferred maintenance or replacement cost that exceeds \$10,000.

- Requires the visual inspection to be performed by a person licensed as an engineer or an architect. However, any qualified person or entity may perform the other components of a structural integrity reserve study.
- Requires a developer to have a structural integrity reserve study completed for each building in the association that is three stories or more in height before turning over control of an association to the non-developer unit owners.
- Provides that it is a breach of a board member or officer's fiduciary duty if an association fails to complete a structural integrity reserve study.