



**LAW OFFICES OF
JOHN L. DI MASI, P.A.**

**CONDOMINIUM &
COOPERATIVE
SAFETY
INSPECTIONS & RESERVES**

SB-4D (2022) Legislative Update

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Safety & Financial Responsibility

In response to the collapse of the Champlain Towers South, a 12-story beachfront condominium in Surfside, Florida, the Florida Legislature called a special session intended to address what happened, and how do we avoid it from happening again, and unanimously passed S.B. 4-D on May 26, 2022.

- The two key components of this legislation deal with Safety and Financial Responsibility for condominium and co-operative associations with buildings at least three stories in height.

Changes to Statutory Provisions:

- Chapter 718 (Condominiums)
- Chapter 719 (Co-Operatives)
- Section 553.899 (Florida Building Commission inspections)
- Section 468.4334 (Community Association Managers)

Real Property Probate and Trust Law Section (RPPTL) of the Florida Bar SB 4-D Technical Amendments Task Force

- Established to discuss the technical “glitches” in the statute
- Prepared a proposed White Paper with amendments that was presented in October 2022
 - Approved by the Condominium & Planned Development Committee
 - Not deemed approved by Section as an official RPPTL Initiative
- Changes still being discussed for future legislative sessions, including convening a committee to discuss substantive amendments

May 26, 2022 – SB 4-D Passed Unanimously

01

Mandatory Milestone
Inspections

- Safety components
- Required timelines

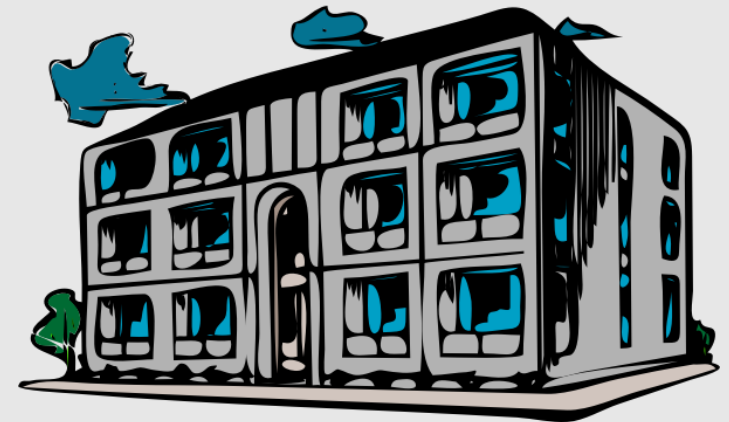
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Structural Integrity Reserve
Studies (SIRS)

- Financial planning
- Based on SIRS Inspection

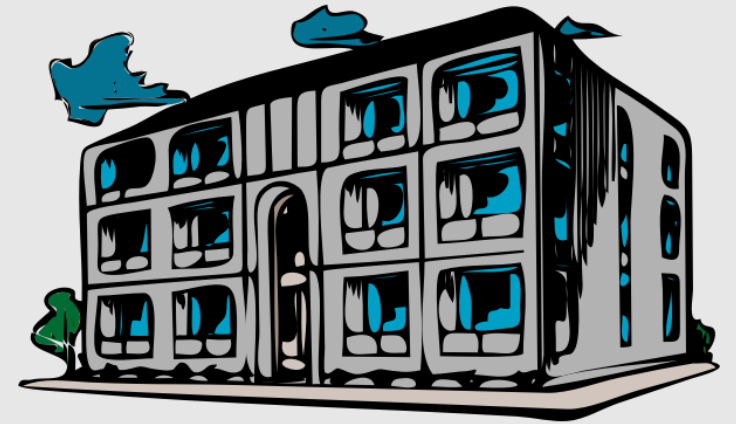
Who must comply?

- Condominiums & Cooperative Associations
- Buildings three stories or higher
 - What is a “Story?” Needs clarification - consult local Building Code
- Developers
- Increased requirements for Local Governments
- Architectural & Engineering Inspectors
- Reserve Study Analysts

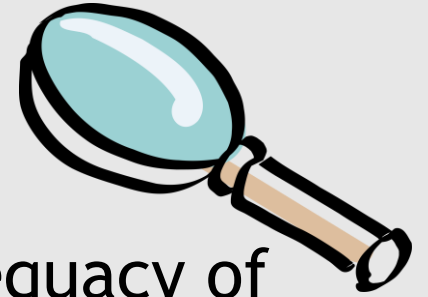


Who must comply?

- CAMs “as directed by the Board”
- Insurance issues
- Disclosure requirements
- Ongoing requirements for Owner-operated Boards
- Willfully or knowingly failing to comply is a statutory breach of fiduciary duty for Board



Mandatory Milestone Inspections



- **SAFETY** - Purpose is to attest to the life safety and adequacy of structural components
- Section 553.899, Fla. Stat.
 - Florida Building Commission (not the same as code compliance with Building Code or fire safety code)
 - The Commission was required to give written report to Governor by 12/31/22, but no glitch bill recommendations were reported
 - Inspection of Load-bearing walls and “Primary structural systems”
 - Minimum inspection deadlines established

Mandatory Milestone Inspections

- Must be completed prior to Turnover
- Otherwise, Certificate of Occupancy determines timeline:
 - 30 years of age (based on Certificate of Occupancy) and every 10 years thereafter, or
 - 25 years of age (based on Certificate of Occupancy) and every 10 years thereafter if the building is located within three miles of a coastline*.
 - Any condo with a Certificate of Occupancy prior to July 1, 1992*, must complete Phase 1 inspection by December 31, 2024
 - Local enforcement agency may impose deadlines of 180 days

Mandatory Milestone Inspections

- PHASE I – visual examination by licensed architect or licensed professional engineer
- PHASE II – necessary if there are signs of “substantial structural deterioration”; may involve destructive or nondestructive testing at the inspector’s discretion.



Mandatory Milestone Inspections

- PHASE I

- Attest to the life safety and adequacy of structural components
- Determine general condition of building and necessary maintenance, repair, and replacement of structural components
- Official sealed inspection report is submitted to both Association and to local government building official

Mandatory Milestone Inspections

- PHASE I

- Visual examination of habitable and nonhabitable areas
- If there are no signs of “substantial structural deterioration”, Phase II inspection is not required
 - DEFINITION: “distress that negatively affects a building’s general structural condition and integrity”
 - Per the Statute, cracks, sagging, misalignment, peeling finishes are not enough unless the licensed inspector determines they are signs of substantial structural deterioration

(Note that this may be different from what a SIRS inspection may include in its report)

Mandatory Milestone Inspections

- PHASE II

- Required if any substantial structural deterioration is identified in Phase I to confirm building is safe
- May involve, at the inspector's direction:
 - destructive or nondestructive testing
 - extensive or limited as necessary
 - locations that are least disruptive and most easily repairable

Mandatory Milestone Inspections



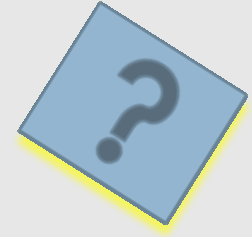
- Inspection Reports
 - Sealed copy of inspection report
 - Separate summary of material findings and recommendations
 - Identify unsafe conditions, even if not rising to the level of “substantial structural deterioration”
 - Recommend remedial or preventative repairs
 - Identify and describe any items requiring further inspection
 - Provided to Association and to Local Government with jurisdiction

Mandatory Milestone Inspections

PROPER NOTICE: Upon completion of Phase I or Phase II Milestone Inspection, and receipt of the inspector-prepared summary report, the Association must distribute a copy of the summary report to each owner, regardless of the findings or recommendations in the report

- US Mail
- Personal delivery
- Electronic transmission (for those who previously consented)
- Post in a conspicuous place
- Publish the full report and summary on the Association's website or App, if Association is required to have a website
- Keep in Official Records for at least 15 years

Mandatory Milestone Inspections



- Challenges and Inconsistencies identified by Task Force:
 - Availability of Licensed Architects and Engineers
 - Time frame for completion of initial Milestone Inspection for older buildings within 3 miles of the coastline
 - Confusion over applying this to Non-residential condominium and co-operative buildings and timeshares, mixed-use projects, vertical subdivisions, and hotel condominiums
 - Local government enforcement, resources, and implementation



Structural Integrity Reserve Study



- **FINANCIAL PLANNING BASED ON INSPECTION**

- Reserve analysis for future major repairs and replacement of common elements based on visual inspection and identify:
 - Common elements* being inspected for each building that is three stories or higher in height
 - Remaining useful life
 - Estimated replacement cost or deferred maintenance expense
 - Provide recommended annual reserve amount to achieve the estimated cost by the end of the estimated useful life
 - Different from a Phase I Milestone Inspection - different function & purpose - cannot be used interchangeably

Structural Integrity Reserve Study

- Visual inspection

Must be conducted by licensed Engineer (Ch 471) or licensed professional Architect (Ch 481)

- Reserve study

- May be performed by “any person qualified to perform such study” - there is no Florida state regulation or licensure

Initial Structural Integrity Reserve Study must be completed by **December 31, 2024**, and must be completed every 10 years

Structural Integrity Reserve Study

- When is it required:
- Initial Structural Integrity Reserve Study must be completed by **December 31, 2024** for Unit-Owner-controlled Associations existing on or before July 1, 2022
- At least every 10 years after Condominium's creation for each building that is three stories or higher in height
- Prior to Turnover from Developer to Owner control

Failure to complete a SIRS is a statutory breach of fiduciary duty

Structural Integrity Reserve Study

◦ Two Categories (or 'Buckets') of Reserves:

Traditional Reserves Fla. Admin. Code R. 61B-22.005

- Roof replacement (non-SIRS buildings only)
- Building painting (non-SIRS buildings only)
- Pavement resurfacing
- Any other non-SIRS item having a deferred maintenance expense or replacement cost over \$10,000
- Optional reserve items
- Applies to all non-SIRS Associations

Structural Integrity Reserves 718.112(2)(g), Fla. Stat.

- Roof
- Load-bearing walls (primary structure)
- Floor
- Foundation
- Fire protection
- Plumbing
- Electrical system
- Waterproofing / Exterior Painting
- Windows***
- Any other item having a deferred maintenance expense or replacement cost over \$10,000 AND negatively affects these categories, as determined by SIRS

Structural Integrity Reserve Study

◦ Two Categories (or 'Buckets') of Reserves:

Traditional Reserves

Fla. Admin. Code R. 61B-22.005

- Before Turnover, cannot vote to use reserves for purposes other than which they were intended
- Reserves that are not required by 718.112(2)(f), Fla. Stat. are not required to be based on any specific formula
- Separate analysis or Pooled analysis

Structural Integrity Reserves

718.112(2)(f)3. and 719.106(1)(j)2.

- After December 31, 2024, Members cannot vote to use (g) reserve funds for any other purpose than their intended purpose
- If Straight-line budget is used, then funds must be used for that purpose unless approved in advance by majority vote at duly called meeting

Structural Integrity Reserve Study

◦ Two Categories (or 'Buckets') of Reserves:

Traditional Reserves
Fla. Admin. Code R. 61B-22.005

- Pooling or Straight-line
- Pooling currently only authorized for “reserves required by Section 718.112(2)(f)”
- Will this also include (g) reserve items, based on Division’s responses on its Q&A page ????

Structural Integrity Reserves
718.112(2)(f)3. and 719.106(1)(j)2.

- Division Q&A site specifies that pooling method of maintaining reserves is “still permissible”
- Division Q&A says it “will rely on the SIRS inspection to determine the components for which there needs to be a reserve”

Structural Integrity Reserve Study

Effective December 31, 2024

◦ BEFORE TURNOVER

- Developers can no longer waive or reduce the funding of reserves
- This applies to ALL reserves, not just those in subsection (g)
- Applies to all condominiums, not just those three stories and over
- Unit-owners cannot vote to underfund or waive reserves

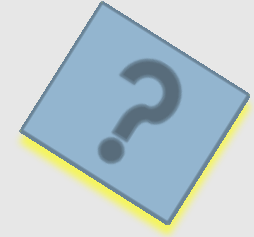
◦ AFTER TURNOVER

- Owner-controlled Association may not vote to partially fund or waive reserves for elements identified in Structural Integrity Reserve Study
(718.112(2)(g), Fla. Stat.)
- Are other Reserves able to be waived/partially funded???
(718.112(2)(f)2.b., Fla. Stat. allows “after Turnover” Developer may vote to waive or reduce funding of reserves)

Structural Integrity Reserve Study

- **Recordkeeping required for both Condominiums and Cooperatives**
 - 15 years (718.111(12), Fla. Stat. and 719.106, Fla. Stat.)
 - Both Structural Integrity Reserve Study records and Milestone Inspection Reports must be maintained for at least 15 years after study is completed or report is received
 - Open to inspection by Owners and Tenants
 - Must be posted in digital format on Association's website or App

Structural Integrity Reserve Study



- Challenges and Inconsistencies identified by Task Force:
 - Availability of Licensed Architects and Engineers
 - Determining Remaining Useful Life for components like floors, foundations, etc., that are intended for the life of the building
 - Long term financial impact on condominium ownership
 - Inflation
 - Enhanced insurance risks due to results of Inspections and Reserve Study budget projections



Additional Reporting Requirements

- **On or before January 1, 2023** must report to Division of Florida

Condominiums, Timeshares, and Mobile Homes:

- Number of Buildings three stories or higher*
- Total Number of Units in such buildings
- Addresses of such buildings
- Counties where located



- Must be updated within 6 months after any status change
- Division keeping a database for this information (myfloridalicense.com)

DBPR Q & A



- If a complaint is received, DBPR Division of Condominiums may perform a “procedural review” of inspections - not a substantive review
- Structural Integrity Reserve funding requirements:
 - By 2025, an Association’s Reserve account(s) must have “all funds necessary to account for the remaining useful life for each reserve component,” depending on the recommendation of the SIRS
 - What does this mean??
 - If the SIRS inspection does not note a problem with a particular component, that component may not “require” a reserve, but be cautious
 - Documentation will be key!

DBPR Q & A



- **Q: I live in a 2-story condominium. Is our association still permitted to waive reserves?**
- A: “The Division does not consider this provision to base an association’s ability to waive reserves on the number of stories that an association’s buildings have.”
 - Does this apply only to items in subsection 718.112(2)(g), Fla. Stat.?
 - How would a 2-story condominium know, if a SIRS inspection for subsection (g) components is technically not required?

Liability



- CAMs and Boards must comply with these record keeping standards and inspections
- Section 468.4334 - CAMs must comply “as directed by the Board”
- Insurance implications
- **Disclosure by Sellers** – Developers (both in Prospectus and at closing) and Non-developer sellers must disclose milestone inspection and most recent SIRS or a statement that the Association has not done a SIRS
- Willfully or knowingly failing to comply is a statutory breach of fiduciary duty for Board

Staying on top of these issues...

- The Real Property Probate and Trust Law section of the Florida Bar is working on resolving inconsistencies and clarifications, so expect additional bills to be introduced in upcoming legislative sessions...
Stay tuned, but don't delay...
- Recommendations of other stakeholders, including the Florida Association of Building Officials, local government enforcement agencies, Engineers, Architects, CPAs, Realtors, DBPR, etc.
- Practical application and financial impact
- Next come the REPAIRS

Prepare now... don't wait!

- Schedule the Mandatory Milestone Inspection with a licensed Engineer or Architect
- Coordinate with your Reserve Study agent to coordinate a Structural Integrity Reserve Study inspection with an updated reserve report for both Structural and Traditional items and fund them separately
- Prepare your Owners for a possible increase in assessments
- Educate your Board about establishing proper Reserves and implementing proper documentation and recordkeeping practices



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THANK YOU

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