

**Report of the Florida Bar RPPTL Condominium Law  
and Policy Life Safety Advisory Task Force**

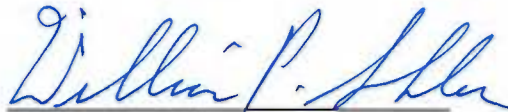
**October 12, 2021**



## DEDICATION

This report of the Condominium Law and Policy Life Safety Advisory Task Force is dedicated to the memory of the 98 individuals who lost their lives in the Champlain Towers South building collapse tragedy and to their families, loved ones and friends, all of whom have suffered a tragedy of immeasurable proportion. While no findings or implementation of recommendations can replace the lives cut short or the memories of loved ones lost, the efforts of the Task Force are first and foremost dedicated to the memories of those lost in this tragedy.

Additionally, this report is dedicated to all the first responders who worked tirelessly and gave their utmost to search, rescue and save any lives to be saved, as well as recover with deep respect those lost in this tragedy.



William P. Sklar  
Chair

## TASK FORCE FORMATION

Within two days of the Champlain Towers South tragedy, discussions occurred among the leadership of the Condominium and Planned Development Committee (“Committee”) of the Real Property, Probate and Trust Law (“RPPTL”) Section of The Florida Bar, specifically outgoing Committee Co-Chair, William Sklar, Committee Co-Chair Joe Adams and incoming Committee Co-Chair, Peggy Rolando, discussed the role of the Committee, RPPTL, and the Florida Bar regarding the public policy issues emanating from the building collapse tragedy. It became immediately clear that, while the Committee was not capable of investigating any specific factual aspect of the tragedy or specific role of any party related to the building collapse, condominium law and policy issues would be addressed, including those relating to the governance and operation of residential condominium associations, building inspections, and financial issues regarding deferred maintenance and capital repairs of condominium buildings.

Committee Co-Chairs Adams and Rolando requested on July 1, 2021 that William Sklar serve as Chair of a Task Force consisting of a diverse group of condominium attorneys with experience in the formation, development, governance and operational issues of residential condominiums and representing a broad spectrum of interested groups, including condominium associations, boards of directors, unit owners, developers, and others involved in the development, governance and operation of condominium projects. In consultation, Adams, Rolando and Sklar selected and invited 5 other distinguished practitioners of condominium and community association law to be members of the Task Force. From its inception, the Task Force made clear that it was not investigating either a specific cause of the Champlain Towers South Condominium building collapse nor the role of any particular party relative to that tragic event. Further, the Task Force is strictly advisory and not a decision-making body and does not act on behalf of the Florida Bar nor the RPPTL Section.

The Task Force held its organizational meeting on July 9, 2021, at which it adopted its Mission Statement, and conducted its first substantive meeting on July 22, 2021 in conjunction with the regularly scheduled Committee meeting at The Breakers in Palm Beach, Florida. The Task Force members are William P. Sklar, Chair, Tallahassee and West Palm Beach; Joseph E. Adams, Ex Officio, Fort Myers and Naples; Margaret Rolando, Ex Officio, Miami; Ivette Machado Blanch, Coral Gables; Christopher Davies, Naples; Peter Dunbar, Tallahassee; Michael Gelfand, West Palm Beach; and Jose “Joe” Rodriguez, Miami. The Task Force was supported by Committee Co-Vice Chairs, Allison L. Hertz, Palm Beach Gardens, serving as Reporter, and, Alexander Dobrev, Orlando, providing technical and data support.

## **MISSION STATEMENT**

The mission of the Task Force is to engage in information-gathering and fact-finding through the review all aspects of Florida Condominium law, development, construction, association operations, and maintenance to determine if changes or additions to legislation and/or regulations could prevent or minimize the likelihood of another tragedy like the Champlain Towers South condominium collapse, or similar tragedies in the future. The Task Force is not a decision-making authority and will not be investigating the cause of the Champlain Towers South building collapse.

## METHODOLOGY

Chapter 718 of the Florida Statutes, the Florida Condominium Act (“the Act”) imposes on the condominium association the responsibility to maintain the common elements and certain other portions of the condominium property. F.S. 718.113(1). Indeed, there have been numerous Florida appellate decisions upholding the right of the association through its board of directors to undertake such maintenance, to protect the common elements and to alter the common elements or other appurtenances to condominium units to maintain and protect the common elements. *Tiffany Plaza Condo. Ass’n, Inc. v. Spencer*, 416 So. 2d 823 (Fla. 2d DCA 1982), *Ralph v. Envoy Point Condo. Ass’n, Inc.*, 455 So. 2d 454, 455 (Fla. 2d DCA 1984), and *Cottrell v. Thornton*, 449 So. 2d 1291 (Fla. 2d DCA 1984). Additionally, Section 718.301(4)(p) of the Act requires the developer to deliver a report prepared by a Florida licensed engineer or architect describing the condition of 13 major components of the condominium property. The report is due at the time the developer turns over control of the association to the non-developer unit owners.

The Task Force believes that the condition report delivered at the time of turnover<sup>1</sup> to the board of directors elected by the unit owners should serve as the standard to guide the board of directors regarding maintenance and inspection of the various components in the vertical condominium and cooperative buildings. In cases where an association does not have a turnover inspection report (these were first required by the Act in 2008), an alternative source of base information is needed. The Task Force also recognizes that the Act, together with the governing documents of each respective condominium and cooperative association, grant boards of directors broad discretion relative to methods and timing of addressing deferred maintenance and capital replacement of condominium property. Such discretion is one area of inquiry of the Task Force, together with: the scope and timing of inspection, credentials of inspectors; the role of local government building officials; establishment and funding of reserves for deferred maintenance and capital replacement of components of the building; review of the current capital replacement reserve requirements under Section 718.112(2)(f)2.a. of the Act; the need for reporting on a regular basis of the condition of the components of the condominium building to unit owners, and perhaps third parties, such as the local building officials or the Division of Florida Condominiums, Timeshares and Mobile Homes (“Division”) of the Department of Business and Professional Regulation of the State of Florida (“DBPR”); and the role of managers and consultants who provide support to associations in these matters.

The Task Force actively sought input from credentialed experts relative to each of these subject matter areas. In its organizational and early meetings, the Task Force determined to seek advice in the form of presentations from qualified reserve analysts, structural engineers, insurance industry experts with particular experience providing insurance to condominium associations, local government building officials, the largest industry group representing boards of directors of condominium associations, the largest industry representative of Florida licensed community association managers (“CAM’s”), Florida

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<sup>1</sup> Such alternative source of base information is in the form of an inspection report later addressed in the Task Force's recommendation.

Association of Realtors, resiliency engineering experts, certified public accountants and the Division as interested parties.

Appendix A to this Report contains the chronology of meetings of the Task Force and identifies those groups and individuals who presented at Task Force meetings.

The Task Force permitted 23 public officials and staff members of the Florida Senate, the Florida House, the Florida League of Cities and the Department of Business and Professional Regulation, among others, to observe during presentations by invited guests. A list of those invited observers is attached as Appendix B to this Report. Biographies of the Task Force members, Task Force Reporter and Technical Advisor are attached as Appendix C to the Report.

Each member of the Task Force was invited to ask questions of each presenter. Copies of the presentation outlines, materials, exhibits and biographical information of each presenter are contained in Appendix D to this Report. The Task Force also requested and received comments and suggestions from the Committee and the public through both a web-portal and by email. The comments received from the web-portal are summarized in Appendix E.

In total, the Task Force met 19 times, generally in sessions of 2 hours or longer, commencing on July 9, 2021 at its organizational meeting and concluding with its approval and adoption of the Task Force report and recommendations on October 8, 2021 for presentation to the Governor, President of the Senate and Speaker of the House of Representatives for the state of Florida with copies to the Chair of the Real Property, Probate and Trust Law Section of The Florida Bar and President of The Florida Bar. Experts made their presentations during 7 of the Task Force meetings. The remainder of the meetings through and including its final session, were utilized for debate, analysis, discussion and deliberations of the Task Force and consideration of recommendations to the Florida Legislature and Governor for Florida law and policy changes with the goal of addressing issues of life safety in condominium buildings in the State of Florida.

Based upon information provided by DBPR, there exist approximately 912,376 condominium units in the State of Florida at least 30 years in age, as determined either from their certificate of occupancy or initial filing of the statutorily mandated annual report with the Division. Based upon information received from DBPR, the following breakdown exists as of July 19, 2021.

There are 1,529,764 residential condominium units in the State of Florida operated by 27,588 associations. Of those units, 105,404 are 50 years old or older, 479,435 are 40-50 years old, 327,537 are 30-40 years old, 141,773 are 20-30 years old, 428,657 are 10-20 years old, and 46,958 are 0-10 years old. It is estimated that there are over 2,000,000 residents occupying condominiums 30 years or older in the State of Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.

Cooperative Housing – Chapter 719 of the Florida Statutes. The Task Force recognizes the existence of cooperative residential housing, pursuant to Chapter 719 of the Florida

Statutes. According to data provided by the Division, there are 778 cooperative projects registered with the Division in Florida. Vertical (multi-story) residential development under the cooperative regime was somewhat common in the 1960's and 1970's but subsequently fell into disfavor due to financing limitations and title issues. Most cooperatives created since that time are mobile home communities who have "bought out" a park owner and set up the cooperative form of ownership for their "resident owned community" to avoid extensive and expensive surveying that would be required to create the condominium. The Division's records do not distinguish between vertical cooperatives and mobile home cooperatives. The Task Force recommends that all provisions of this Report be equally applicable to all vertical cooperatives (living units of 2 stories or more) and that appropriate changes to the Florida Cooperative Act, Chapter 719 of the Florida Statutes, also be made.

All statutory citations contained in this Report are from 2021, unless otherwise noted.

## HISTORY OF CONDOMINIUMS AND CONDOMINIUM GOVERNANCE

The condominium form of ownership of real property in Florida has been in statutory existence since 1963, when the Florida Legislature enacted then Chapter 711 of the Florida Statutes (Laws of Florida, Chapter 63-35). The unique and defining characteristics of a condominium unit is that each unit owner owns a unit in fee simple and co-owns with all other unit owners an undivided interest in those portions of the condominium outside of the units, known as common elements. Governing this system of common ownership is the condominium association, the entity responsible for the operation of the condominium. Membership in the association is an unalienable right and a required condition of unit ownership.

A condominium is created by recording a declaration of the condominium in the Public Records of the county where the condominium is located. The declaration describes the property submitted to condominium ownership and defines the units and common elements identifying the boundaries of each. The condominium declaration governs the relationships among the condominium unit owners and the condominium association. Pursuant to the declaration, a board of directors or administration of the condominium association is granted broad authority to adopt rules for the benefit of the community and operate the community in accordance with the declaration of condominium and the documents forming the condominium association, namely the articles of incorporation, and bylaws governing the association's administration. The power of the association to maintain the common elements of the condominium has continuously existed from the inception of Florida's Condominium Act (F.S. 711.12(6)) through the present (F.S. 718.113(1)). Condominium associations are creatures of statute and subject to private contract rights created by the governing documents. Associations must be incorporated in Florida as a not-for-profit corporation or for profit corporation (pre-1977 associations could be unincorporated).

As a member of the association, a unit owner lacks the authority to act on behalf of the association. Instead, the condominium association's board of directors, sometimes also referred to as a "board of administration", manages the community's affairs and represents the interests of the association. The board of directors is comprised of individuals who are unpaid volunteers elected by the members of the association (unit owners), after the developer has transferred control of the board to the non-developer unit owners ("transition" or "turnover"). In addition to the power to elect, unit owners have the power to remove directors without cause by majority vote. Association board members are duty bound to enforce the condominium's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners. F.S. 718.113(1). The association's board of directors, its officers, both collectively and individually, owe a fiduciary duty pursuant to section 718.111(1)(a) of the Act to all unit owners who are members of the association. The interpretation of how such a fiduciary duty is implemented in the context of a condominium association's operations typically includes the duty to maintain, duty to protect against foreseeable dangers, duty to insure, duty to abide by the governing documents and law, and, to generally act in the best interests of the members of the



association.

The ability, power and duty to maintain the common elements and a condominium building generally, are generally established in the Act, and are typically defined with greater specificity in the governing documents, especially in the declaration of condominium and bylaws of the condominium association.

## **ISSUES AND RECOMMENDATIONS**

The Task Force finds that the area of inquiry identified below are critical to the preservation of property values, building safety and financial stability of Florida's aging residential condominiums. Indeed, no one factor itself is determinative, but taken together, these factors form the interwoven physical and financial stability of condominium buildings and associations.

Presentations regarding these areas of inquiry were solicited and received from the Florida Association of Structural Engineers, representatives of reputable reserve study analysts, the Florida Association of Building Officials, two insurance industry subject matter experts, a resiliency structural engineer, the Florida Association of Realtors, Community Associations Institute representing governing bodies of condominium associations, CEOMC representing community association managers, and the Secretary of the Department of Business and Professional Regulation.

The Task Force was made keenly aware by most presenters of the inherent conflict existing between the economic realities of operation of a condominium, the need for investment for deferred and long term maintenance and structural repair, and the desires of the unit owners in their election of and direction to boards of directors of condominium associations to manage and operate their condominiums in a cost effective manner, be market-sensitive, avoid special assessments, and avoid excessive or unaffordable charges to unit owners.

To be clear the Task Force is not suggesting that any significant percentage of the over 912,000 30+ year aging condominium units is not well maintained or well managed. No empirical data exists that could be used to reach such a conclusion. However, the Task Force finds the lack of uniform maintenance standards or protocols, and the broad discretion given to boards to determine when, how, and if life safety inspections and necessary repairs should be performed, requires legislative intervention. A determination of what acts or omissions of a director, officer or other person constitute a breach of fiduciary duty is currently left to the courts on a case by case basis. Based upon the significant experience of the members of the Task Force, including those that represent multiple condominium associations, it is believed that the vast majority of residential condominium associations are operated and maintained in a reasonably safe manner, consistent with protecting the life safety of all the residents of each condominium building. That said, the absence of specific requirements for inspection, reporting the results of inspections, and the contents of inspections, should not be left to chance.

It is with these precepts in mind, that the Condominium Law and Policy Life Safety Advisory Task Force makes the following observations and recommendations related to the areas of inquiry studied by the Task Force:

1. **Board of Directors Obligation for Maintenance, Repair and Replacement:**

- a. **Task Force General Findings:** Decision making and authority over the maintenance, repair and replacement of the condominium property including the condominium building generally lies with the board of directors of the association acting on behalf of the unit owners who are members of the association. Directors typically are elected for one or two year terms and may serve up to 8 consecutive years before being required to take a hiatus from board service. Issues of life safety and building condition should be addressed by professionals engaged by the board of directors or community association managers acting at the direction and authority of the board of directors. Standardized maintenance and repair protocols will better protect the health, safety and welfare of residents. The board should not be hindered in performing necessary maintenance, repairs or replacements because of potential exposure or liability of the association for alternative housing and other expenses from unit owners if they need to vacate the building.
- b. **Current Law:**
- i. Section 718.113(1) of the Act provides that maintenance of the common elements of a condominium is the responsibility of the association.
  - ii. Section 718.111(1)(a) of the Act provides that the officers and directors of the association have a fiduciary relationship to the unit owners.
  - iii. Section 718.111(1)(d) of the Act provides that an officer, director, or agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.
- c. **Relevant Considerations:** A board of directors may maintain, repair and replace the common elements in its reasonable business judgement per relevant Florida case law. There are no express maintenance, repair or replacement standards for boards of directors to follow in the Act or in most governing documents. While the board has the duty and authority to maintain the common elements, it has no statutory obligation to inform the unit owners of the building condition, This gap between the information known by the board and that disseminated to the members can undermine the unit owners' understanding of the significance of and need for assessments to fund deferred maintenance. Unit owners and boards may also resist such maintenance because of the cost, lack of reserves, disruption and inconvenience. Boards and unit owners could benefit from widely available guidelines setting forth requirements for such long term, deferred, and where appropriate, structural maintenance to be undertaken relative to improvements to the condominium property. In certain instances,

declarations of condominium will contain “incidental damage” language potentially requiring the association to fund the costs of alternative housing or other expenses if a resident is required to vacate the building.

**d. Task Force Recommendations:**

- i. The Task Force recommends clarifying and expanding the Act to require timely maintenance, repair and replacement of structural and life safety systems in vertical construction of both condominium and cooperative buildings consistent with and keyed to Section 718.301(4)(p) of the Act. Waterproofing should be added to that section of the statute as a required maintenance component/line item.
- ii. The Task Force recommends amendments to the Act to preclude association liability for alternative housing costs, lost rent or other expenses where residents must vacate for necessary maintenance, repairs or replacements to the condominium property.
- iii. The Task Force recommends that the Act codify, in line with the appellate case decisions cited above, that necessary maintenance of the condominium property not be considered a “material alteration or substantial addition” which might otherwise trigger a unit owner voting requirement.

- e. Other Notes from Task Force:** The Task Force recognizes and encourages the need for transparency by associations in communications by their boards of directors and managers to unit owners and prospective purchasers, and the recommendations in this Report reflect the need for such transparency in the form of disclosure of inspection reports, the condition of the condominium building and status of maintenance of the condominium property.

## 2. Special Assessments and Borrowing:

- a. **Task Force General Findings:** Boards of directors must be able to fund maintenance, repairs and replacements to the condominium property if the boards are to have the tools to fulfill their duties. The Act does not provide clear authority for boards to levy special assessments or borrow money on behalf of the association for maintenance, repairs or replacements. In fact, many governing documents require prior unit owner approval to do so, or may flatly prohibit borrowing. Boards should not be unreasonably hindered in carrying out maintenance, repairs and replacements. Rather, they should be specifically empowered to make assessments and borrow money as appropriate for the specific maintenance, repair and replacement needs of the association.
  
- b. **Current Law- Special Assessments:** Although the Act addresses notice requirements related to the adoption of a special assessment by a board of directors, the Act does not clearly authorize boards to levy special assessments.
  - i. Section 718.103(24) of the Act defines special assessment as any assessment levied against a unit owner other than the assessment required by a budget adopted annually.
  - ii. Section 718.1265(1)(l) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.”
  
- c. **Current Law- Borrowing:** The Act does not clearly address an association’s authority to borrow money.
  - i. A corporation not for profit may borrow money at such rates of interest as the corporation may determine, and secure its obligation by pledge of all or any of its income under the Florida Not For Profit Corporations Act, Section 617.0302(7).
  - ii. Section 718.111(7)(a) of the Act provides that the association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of

its members<sup>2</sup>.

iii. Section 718.1265(1)(m) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “without unit owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.”

d. **Relevant Considerations:** The Act does not clearly address the authority of a board to levy a special assessment or borrow money for the association. It is typically addressed in the association’s declaration of condominium, articles of incorporations or bylaws. However, declarations of condominium, articles of incorporation or bylaws will often times limit an association’s authority to borrow money and/or specially assess, or require a certain percentage of the membership to approve borrowing and/or special assessments. Monetary limits on the amount an association can borrow or specially assess can impede the association’s ability to finance or charge for major critical repairs without the approval of a majority or super-majority of the unit owners. This unnecessarily and adversely affects an association’s ability to maintain, repair and replace the condominium property. The relevant Florida case law indicates that an association should not be precluded from performing maintenance, repairs and replacements, which are necessary for the health, safety and welfare of the residents. This has also been emphasized by many of the presenters who provided input to the Task Force. Otherwise, volunteer directors are caught between two competing irreconcilable requirements, limits on funding sources and the duty to maintain, repair and replace.

e. **Task Force Recommendations:** The Task Force recommends amendments to the Act to provide that prohibitions or limitations on a board’s authority to adopt special assessments or borrow money on behalf of the association for the necessary maintenance, repair or replacement of the condominium property, including any requirements for unit owner voting or approval, are void as against public policy, and that any such provision in existing governing documents be deemed void. This recommendation is

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<sup>2</sup> No association may convey or mortgage association real property except in the manner provided in the declaration and, if the declaration does not specify the procedures, 75% of the total voting interests is required.

intended to apply retroactively to existing associations.

### **3. Inspection Reports; Transparency:**

**a. Task Force General Findings:** Requirements for tracking and reporting condominium building maintenance and condition do not exist in Florida law. Indeed, the Task Force was not presented with any requirements for specific maintenance, repair, deferred maintenance or similar protocols or requirements in the Act or the Florida Building Code, even after consultation with building officials and structural engineers. The engagement of an inspector is left to the discretion of the board of directors. The qualifications and credentials of inspectors are not regulated. The commencement of inspections and interval between such inspections are not addressed in the State law. With the exceptions of recertification requirements in Miami-Dade and Broward Counties, local governments do not receive nor provide associations with copies of inspections reports and are not required to issue recommendations to the association. If an association commissions an inspection report, it has no statutory obligation to share the findings with the local government or the unit owners. It was also found that greater access to building inspection reports by unit owners is needed.

#### **b. Current Law- Required Inspections and Inspection Reports:**

**i. Building Recertifications:** Only in Miami-Dade County and in Broward County, does there exist what is known as the 40-Year Recertification, pursuant to each of those two counties' respective local codes and ordinances, requiring a detailed inspection report by a licensed engineer (threshold engineer) or architect to be performed 40 years after completion of the condominium building or other residential property. Beyond Miami-Dade and Broward Counties, there is no requirement in any other county, city or local government in the State of Florida for such certification, inspections, reporting or determination of the structural soundness or integrity of a residential condominium building<sup>3</sup>.

**ii. Developer Turnover Inspection Report:** As of July 1, 2008, Section 718.301(4)(p) of the Act has required a developer to provide, at turnover of control of the association to the non-developer unit owners, an inspection report under seal of an architect or engineer, attesting to the required maintenance, useful life, and replacement costs of the following:

**i. Roof,**

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<sup>3</sup> In August 2021, the City of Boca Raton enacted a similar certification ordinance requiring 30-year recertifications for buildings greater than 50 feet or 3 stories in height. Other local governments are reported to be now considering requirements on an individual basis.

- ii. Structure,
- iii. Fireproofing and fire protection systems,
- iv. Elevators,
- v. Heating and cooling systems,
- vi. Plumbing,
- vii. Electrical systems,
- viii. Swimming pool or spa and equipment,
- ix. Seawalls,
- x. Pavement and parking areas,
- xi. Drainage systems,
- xii. Painting, and
- xiii. Irrigation systems.

iii. **Association Website Requirement:** An association managing a condominium with 150 or more units which does not contain timeshare units must have a website and is required to post digital copies of certain documents on its website or make such documents available through an application that can be downloaded on a mobile device. Building inspection reports are not required to be posted on these websites.

c. **Relevant Considerations:** According to presenters, cost considerations or lack of understanding observable physical conditions has caused some boards to defer, delay and perhaps ignore potentially significant building deterioration issues such as concrete spalling and deterioration, rebar and other metal element failures, structural cracking, lack of appropriate weather or waterproofing. These factors can lead to deterioration of condominium buildings and improvements, and can present potential significant life safety concerns. In 2008, the Florida Legislature adopted a requirement that every building greater than three stories in height to be inspected every five years as part of Section 718.113 of the Act. This law required that condominium buildings over 3 stories be inspected under seal of an architect or engineer attesting to required maintenance, useful life, and replacement costs of the common elements. In 2010, this law was repealed for what was stated in the Senate Staff Report as “cost-savings measures”.<sup>4</sup> With the exceptions of Miami-Dade and Broward Counties recertification requirements, local governments do not require inspections of buildings, recommendations of local governments are minimal, and certain reports are not readily available to associations.

d. **Task Force Recommendations:**

i. **Developer Turnover Inspection Report:**

1. The Task Force recommends that waterproofing be added to the list of items required to be addressed in the developer

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<sup>4</sup> Fla. Staff An. H.B. 663, April 21, 2010.



turnover inspection report pursuant to Section 718.301(4)(p) of the Act.

2. The Task Force recommends that the developer turnover inspection report required by Section 718.301(4)(p) of the Act be required to also attest to the condition of the required items.
3. The Task Force recommends that the developer's turnover condition inspection report required by Section 718.301(4)(p) of the Act include a detailed maintenance protocol for each component of the building in the turnover inspection report and that Section 718.113 of the Act be amended to require associations to comply with the maintenance protocols provided by the developer until such time as the association obtains a new maintenance protocol from a licensed professional engineer.

**ii. Association Inspection Report:**

1. The Task Force recommends requiring periodic structural and life safety inspections of all condominiums and cooperatives with vertical construction of 3 stories or greater after transition of control to unit owners.
2. The Task Force recommends a standardized template for required association building inspection reports after turnover and uniform qualifications for professionals providing association inspection reports. Guidelines/requirements for such reports should include, without limitation, requirements/credentials for the preparer of the inspection report.
3. The Task Force recommends that by December 31, 2024, any residential condominium building 3 stories or greater in height, be inspected and the association obtain a report under seal of a licensed Florida architect or engineer, attesting to current and deferred maintenance standards, useful life, and replacement costs of the common elements and other condominium property that is the maintenance responsibility of the association. An updated report shall also be required every five years thereafter. A report shall not be required for an association that received the developer turnover report required by F. S. 718.301(4)(p) provided that an association must update such report every five years.

**iii. Local Government Inspection Reports:**

1. If building inspection reports are required or performed by a local government, the local government shall provide the association a copy of the report and the recommendations concerning the necessary repairs to the building structure.

**iv. Disclosure of Inspection Reports:**

1. The Task Force recommends that by December 31, 2023, associations operating 100 units or more, or having annual revenues in excess of \$500,000 be required to have a website in compliance with Section 718.111(12)(g) of the Act. The Task Force further recommends that an association be required to update the website no less frequently than quarterly, except as noted below. Final building inspection reports must be posted on the website no more than 10 days after receipt. Directing a unit owner or his/her representative to any website that contains a requested record(s) accessible to the unit owner shall be deemed to satisfy a request for access to records under Section 718.111(12)(c) of the Act. Failure to post records to a website or update a website as required shall not invalidate any action of the association.
2. The Task Force recommends requiring association inspection reports to be distributed to all unit owners which distribution may be done electronically. The Task Force recommends revisions to the Condominium Frequently Asked Questions forms to include a disclosure of the existence and date of the most recent building inspection report.
3. The Task Force also recommends that the building inspection report be added to the list of documents which must be provided for buyer review before the 3-day rescission period in unit resales commences, pursuant to Section 718.503 of the Act.

**e. Other Notes from Task Force:** While the Task Force made no specific recommendation considering it best addressed by experts, the Task Force acknowledges the benefit of the certification of a sub-specialty license for professional structural engineers.

4. **Association Compliance with Inspection Report Requirements and Remedies of Unit Owners:**

- a. **Task Force General Findings:** Unit owners should have defined remedies in the event an association fails to obtain a required inspection report or in the event an association fails to commence work required by an inspection report. However, to avoid premature, costly litigation, a reasonable notice and an opportunity to cure the failure should be provided to an association by a unit owner before legal action is commenced by the owner, other than in emergency situations.
- b. **Current Law:** There is no requirement for an association to obtain a building inspection report.<sup>5</sup> Section 718.111(1)(c) of the Act provides that a unit owner does not have any authority to act for the association by reason of being a unit owner. Section 718.303 of the Act provides that a unit owner may bring an action at law or in equity in connection with an association's failure to comply with the Act or the association's declaration or other governing documents, and the prevailing party is entitled to recover attorneys' fees and costs from the non-prevailing party. A unit owner may also bring claims for negligence and breach of fiduciary duty.
- c. **Relevant Considerations:** The presenters repeatedly emphasized to the Task Force that associations, administered by boards of directors, are responsible for the maintenance, repair and replacement of various components of the buildings. Unit owners are not empowered to independently act for associations and, therefore, they must have reasonable and cost effective options to pursue in the event of an association's failure to perform required inspections and/or maintain, repair or replace the condominium property.
- d. **Task Force Recommendations:**
  - i. The Task Force recommends establishing a private cause of action of a unit owner if an association fails to obtain a required inspection report or perform work required by an inspection report, including, without limitation, options for a unit owner to seek the appointment of a receiver. Such private cause of action should not be subject to the arbitration or pre-suit mediation requirements of the Act.
  - ii. The Task Force recommends that absent emergency situations of imminent life safety, a unit owner be required to provide an association with notice, and then opportunity to cure, prior to proceeding with an action for failure to obtain a required inspection report. A unit owner's private cause of action for an association's

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<sup>5</sup> Other than in Miami-Dade and Broward Counties, and in the City of Boca Raton in connection with required recertification programs

failure to timely obtain an inspection report should not be a “dispute” subject to arbitration or pre-suit mediation under Section 718.1255 of the Act.

- iii. The Task Force recommends granting unit owners the right to request that the Division of Florida Condominiums, Timeshares and Mobile Homes issue a notice, which is admissible in court, of alleged noncompliance with the association’s duty to obtain a required inspection report or maintain the condominium property. The Division should be authorized to adopt rules to implement such for cause notice procedure.

**5. Reserve Studies; Reserve Waivers; Funding Reserves:**

- a. Task Force General Findings:** Associations should fund reserves in adequate amounts to ensure the maintenance, repair and replacement of structural and life safety components of a building. The failure to maintain cash reserve funds on-hand is often detrimental to associations, although owners in some communities are able to afford to “pay when it’s needed”. Many associations are not in the position or are reluctant to fund necessary deferred maintenance or capital projects when the need arises because of the lack of reserve funds as a result of waiving reserves , sometimes for decades. Many necessary repairs or maintenance may be sidestepped for this reason. However, reasonable alternative methods of funding may be appropriate for some associations.
- b. Current Law:**
- i.** There is no requirement for an association to obtain a reserve study.
  - ii.** Section 718.112(2)(f) of the Act requires boards to annually budget for fully funded reserves for building painting, pavement resurfacing and roof replacement, and any other item for which the deferred maintenance or replacement cost exceeds \$10,000.
  - iii.** Section 718.112(2)(f) of the Act authorizes a reduction or waiver of the required reserve funding, which must be approved by a majority of the members of the association at a meeting at which a quorum of the unit owners is present.
  - iv.** Section 718.112(2)(f) of the Act authorizes developers to vote to waive or reduce reserves for the association during the first two fiscal years of the association’s existence.
  - v.** There is no limit to the number of years an association may waive or reduce reserve contributions. Reserves may be waived by the unit owners every year.
  - vi.** There is no specific disclosure requirement in the Act for an association’s year-end annual financial statement as to reserve funding waiver or reduction decisions.
  - vii.** Section 718.112(2)(f) of the Act provides that reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved by a majority of the membership present at a duly called meeting. Before turnover of control of an association by a developer to unit owners, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of the nondeveloper voting interests.
  - viii.** Funding formulas for reserves required by Section 718.112(2)(f) of the Act must be based on either a separate analysis of each of

the required assets (“straight line” or “component”) or a “pooled” (or “cash flow”) analysis of two or more of the required assets under Rule 61B-22.005(3) of the Florida Administrative Code (“FAC”).

ix. Regarding pooled reserves, Rule 61B-22.005(3)(b) of the FAC provides that:

1. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

c. **Relevant Considerations:** Recommendations for enhanced reserve funding requirements were repeatedly made to the Task Force. The failure to maintain reserves for critical building components was viewed as a major contributor to the lack of maintenance, repairs and replacements in many condominiums. Although many presenters advised against waiving reserves on a continuous year to year basis, it is not atypical for associations to waive reserves every year and rely on special assessments or lines of credit for funding on an as needed basis. These alternative funding mechanisms may only be appropriate for certain associations.

d. **Task Force Recommendations:**

- i. **Reserve Studies:** The Task Force recommends amendments to the Act to require periodic reserve studies for residential condominiums with 3 stories or greater. As stated elsewhere in these recommendations, the content of such reserve studies should be made through a uniform prescribed template by licensed architects or engineers as described in Article 3(d)(ii)(3) of this Report regarding association inspection reports, or licensed general contractors who serve as cost estimators with at least ten years of licensure and ten years of experience in vertical construction. The Task Force recommends that the Legislature consider combining the content of the reserve report recommended in this Article 5 and the inspection report recommended in Article 3 to avoid duplication of services and unnecessary costs to

associations.

- ii. Reserve Components:** The Task Force recommends that commencing with the first association budget year and each year thereafter, the association shall be required to maintain capital replacements/deferred maintenance budget reserves for each component item stated in Section 718.301(4)(p) of the Act and waterproofing (“mandatory reserves”). Prior to the issuance of a turnover report, the developer budget projections will serve as a basis for determination of the useful life and replacement costs of each stated common element component item. The turnover inspection report required by Section 718.301(4)(p) of the Act will serve as a basis for such useful life and replacement costs. Where there is no developer turnover report, the required association inspection report would serve as a basis for replacement costs until a reserve study is done in accordance with Subsection (i) of this Section 5. The association may also collect reserves for non-mandatory components or expenses, as determined by the board of directors or as otherwise required by the governing documents, such as landscaping, redecorating, funding insurance deductibles, and replacing furniture, fixtures and equipment (“non-mandatory reserves”).
- iii. Pooled Reserves:** The Task Force recommends eliminating the option for condominiums to maintain pooled reserves for mandatory reserve components under Section 718.301(4)(p) of the Act, and waterproofing. Pooled reserves initially set aside for building structural and other essential components of the condominium building cannot be diverted to non-life safety expenditures and other discretionary uses of funds which reduce, diminish, or even eliminate necessary resources for life safety repairs and maintenance. Non-mandatory reserves may be pooled.
- iv. Reserve Disclosures:** The Task Force recommends required specific disclosures to unit owners in annual financial statements as to any waivers or reductions of required reserve funding.
- v. Reserve Funding:** As to deferred maintenance and repair and replacement of the components listed in Section 718.301(4)(p) of the Act, the Task Force recommends that by December 31, 2026, an association be required to establish a fund for each component in an amount equal to not less than 50% of the replacement costs based on the estimated remaining useful life. For those building components that have a useful life of more than 30 years, such as structural, fire protection, elevators, plumbing, electrical and

drainage systems and seawalls, the Task Force recommends an association establish a reserve fund for these components using a 40-year original useful life, with a remaining useful life based upon the most recent building inspection report. The Task Force recognizes that certain building components such as heating and cooling systems may have a useful life less than 30 years and such useful life determination should be pursuant to the most recent building inspection report. If an association does not achieve the required funding by December 31, 2026, it shall be obligated to secure an alternative funding mechanism(s), which must be disclosed to the unit owners, and to prospective purchasers in the FAQ and in the estoppel form. Non-mandatory reserves shall be funded at the levels recommend by the board of directors.

**vi. Developer Waiver of Reserves:** The Task Force recommends that the authority of a developer to waive statutory mandated reserves under Section 718.112(2)(f) of the Act be repealed.

**vii. Association Waiver of Reserves:** The Task Force recommends that the authority to annually waive or reduce mandatory reserves be amended to require the approval of no less than 75 percent of the voting interests present and voting at a meeting at which a quorum is present. The Task Force further recommends that no association may reduce mandatory reserves below 50 percent of the total statutorily required amounts. For any amounts waived, the association must establish an alternative funding mechanism(s). The waiver and alternative funding mechanism(s) must be disclosed in a conspicuous manner to unit owners, and to prospective purchasers in the FAQ and in the estoppel form.

**viii. Use of Reserves:** The Task Force recommends that mandatory reserves not be used for non-scheduled purposes other than casualty reconstruction, including deductibles. They may also be used for insurance premiums as long as repaid within 12 months. Both exceptions require the approval of a majority of the voting interests present and voting at a meeting at which a quorum is present.

**e. Other Notes from Task Force:** The Division currently has broad authority to investigate alleged reserve funding violations.



6. **Developer Warranties and Liability, Design Professional Liability:**

- a. **Task Force General Findings:** Developers and others involved in the construction and sales of new condominiums should be accountable for defects attributable to original construction and for ensuring the association is in a sound financial and operational position at the time of turnover.
  
- b. **Current Law:**
  - i. Developers are required to provide implied warranties of fitness and merchantability for the condominium building and certain other improvements under Section 718.203(1) of the Act.
  - ii. Contractors, subcontractors and suppliers of the developer provide similar warranties under Section 718.203(2) of the Act.
  - iii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.
  - iv. Section 95.11(3)(c), Florida Statutes, currently provides for a statute of limitations for actions founded on negligence as well as design, planning, or construction of an improvement to real property, all of which is within 4 years from certain events occurring. However, actions for design, planning or construction must commence within 10 years after the date of actual possession by the owner, the date of the issuance of the certificate of occupancy, the date of abandonment of construction, if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. This latter limitation is commonly known as a statute of repose.
  
- c. **Relevant Considerations:** Declarations of condominium often limit and restrict the ability of the association and the unit owners to bring claims against the developer for construction related problems. Some contracts between a developer and unit purchasers include similar limitations and restrictions. These are not in the interest of the long-term viability of the condominium project.
  
- d. **Task Force Recommendations:**
  - i. **Developer Disclaimers and Liability:** The Task Force recommends amendments to the Act, and other appropriate regulatory changes, to provide that developer non-statutory warranty disclaimers and other waivers of liability by unit owners for construction defects in offerings, prospectuses, declarations, contracts, or otherwise be void against public policy. The Task Force also recommends amendments to the Act to provide that prohibitions and limitations against boards of directors bringing legal action against developers, (including unit owner approval requirements), are void as against public policy.

- ii. Limitations on Actions for Design/Construction Related Claims:**  
The Task Force recommends amendments to Florida law to provide ample opportunity for condominium and cooperative associations to seek redress for defective design and construction under the applicable statute of limitations and repose in Section 95.11(3)(c), Florida Statutes.

## 7. Termination of Condominiums for Economic Waste/Obsolescence:

- a. **Task Force General Findings:** There should be practical options for unit owners to terminate their condominium where the building has become economically obsolete or the cost of necessary maintenance repairs represents a disproportionate cost in relation to the value or increase in value of the property.
  
- b. **Current Law:**
  - i. Section 718.117(2)(a) of the Act provides that notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:
    - 1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
    - 2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.
  - ii. Section 718.118 of the Act provides that in the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.
  
- c. **Relevant Considerations:** Termination thresholds that are impractical result in great economic waste, forcing unit owners to pay for repairs that will not correspondingly increase the value of the condominium, in turn forcing owners who cannot pay to sell their units below value or lose title in a foreclosure. If the association is not able to fund necessary repairs and replacement, the condominium becomes an eyesore and depresses the value of the units within it as well as neighboring property values and correspondingly depresses ad valorem tax revenues. This problem stokes outrage by owners when one or a small number of owners have an effective veto of a termination plan. At the same time, Florida has historically placed a special intrinsic value on real property ownership, especially homesteads, as well as contract rights conferred by a declaration of condominium. Further in the current real estate market it is often impossible to replicate the location and size of a unit with a termination's proceeds. Also, the threshold should not be so low as to encourage the wholesale buying of

groups of the condominium units for termination.

**d. Task Force Recommendations:**

- i. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for economic waste or obsolescence where the cost of construction/repairs exceeds a disproportionate percentage of the cost of the vertical improvements to the condominium, to be determined by an independent MAI appraisal. The required vote to authorize such termination shall be no greater than 80% of the total voting interests of the condominium, unless the declaration provides for a lower percentage for such termination.
- ii. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for uneconomic capital repairs where the total estimated cost of construction or repairs necessary to construct the vertical improvements included in the condominium property or restore such improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds 15 percent of the then current fair market value of such vertical improvements.
- iii. The Task Force recommends that the required vote to authorize termination for economic waste, impossibility or uneconomical capital repairs as provided in Section 718.117(2)(a) of the Act be the lesser of the lowest percentage of voting interests necessary to amend the declaration, or the percentage of voting interest required in the declaration for approval of termination, or 80 percent of the voting interests in the condominium.

8. **DBPR Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund:**

- a. **Task Force General Findings:** It is the understanding of the Task Force that the funding of the Division's Education and Compliance Bureau is subject to the appropriations allocations of the Florida Legislature on an annual basis. Such allocations are primarily derived from the Condominium, Timeshare and Mobile Homes Trust Fund, which is funded by a statutory \$4 per residential unit annual fee required to be paid by each condominium association to the Division. Such trust fund, similar to other trust funds, are subject to the reallocation, deduction, or what is commonly referred to as "sweep" by the Legislature in its annual appropriations process to achieve a fully funded budget as constitutionally and statutorily required. Such sweeps have reduced the availability of trained staff to deliver meaningful substantive education of condominium association directors and officers, as well as unit owners, throughout the State. Given that there are over 27,000 condominium associations and what is estimated to be almost 3,500,000 Florida condominium residents, the Task Force believes that the education of directors, officers and unit owners, as to their specific obligations, statutory requirements and issues involved in association and condominium management, operation and maintenance is imperative. Condominium communities need to understand the obligations and consequences of common interest ownership as well as the duties of boards of directors and officers to diligently maintain, repair and make safe such buildings and the role of unit owners in the operation and financial support of their respective condominium associations. The Task Force believes that insufficient funding has hindered the Division's ability to adequately recruit, train and retain staff at the Division's Education and Compliance Bureau to robustly undertake such education programs. Thus, the Task Force believes such impediments to adequate staffing and funding should be removed as part of the annual legislative appropriations process.
- b. **Task Force Recommendations:**
- i. The Task Force recommends that the Florida Condominium Trust Fund shall not be subject to sweep, deduction or use for any purpose other than the operation of the DBPR Division of Condominiums, Timeshares and Mobile Homes. At least 30 percent of the Florida Condominium Trust Fund should be used annually for educational purposes intended to train and educate directors, officers, and unit owners in programs to be administered by the Division.
  - ii. The Task Force supports the implementation of a cause of action to authorize the DBPR to collect delinquent fees/charges.

## 9. Unit Owner Financing:

- a. **Task Force General Findings:** In those instances where condominium associations do not have funds or reserves for repairs or maintenance as they are needed, especially structural repairs, or capital replacement of deteriorated components of the condominium buildings and other improvements, a potentially large special assessment will be required, as elsewhere described in this Report. The magnitude of such special assessments often pose a financial burden on individual unit owners, especially those on fixed incomes or with limited financial resources. While associations may have the means to undertake short-term borrowing or other financing using lines of credit and pledging association assessment revenue streams, the need for viable programs to fund deferred maintenance and structural repairs should be addressed by federal, state and local agencies offering means tested financing alternatives to individual owners to fund special assessments.

In that regard, the Task Force believes that appropriate federal, state and local housing finance and affordable housing administration agencies should undertake an analysis and create programs based upon existing mortgage and other home finance improvement programs to provide those with limited incomes low cost and low interest long-term amortized mortgage financing opportunities to pay the referenced special assessments. An example would be the current PACE program used to allow for hurricane strengthening and energy efficiency improvements to housing to those who qualify. An expansion of the scope of such PACE program is one example of how government could innovatively provide financing for those with limited means and income to support the building infrastructure improvements for aging condominium properties.

Another example of potential funding of deferred maintenance and capital replacement of condominium building structures would be the creation and use of Municipal Benefit Taxing Units or Municipal Service Taxing Units ("MSBU's and MSTU's"). Such special taxing district units could be used to provide long-term low interest financing vehicles to fund the substantial repairs as an alternative to special assessments.

Another alternative funding source for structural repairs and deferred maintenance items of condominium buildings could be the affordable housing trust fund commonly known as the Sadowski Fund. The Task Force recommends that legislation be enacted to enable such affordable housing trust fund be used for condominium structural repair and deferred maintenance use. A portion of the Sadowski Fund can be earmarked for deferred maintenance/structural repairs for those unit owners who satisfy the income/means qualification to otherwise qualify for state affordable housing funds.

Another example, at the federal level, would be to provide FHA or VA government guaranteed long-term amortized mortgages for the specific purpose of funding deferred maintenance and structural repair special assessments based using an income/means test. Additionally, current state and local government bond programs could be expanded in scope and purpose to encompass such necessary condominium deferred maintenance and structural repairs to allow individual unit owners to obtain long-term financing. All of these programs would be secured by first or second mortgages on an individual owner's condominium units, thus creating a security interest providing probability of repayment of such government guaranteed or subsidized mortgage loans.

- b. Task Force Recommendations:** The Task Force recommends that the Department of Housing and Urban Development (“HUD”), the Federal Housing Finance Agency (“FHFA”), and the Florida Housing Finance Corporation adopt major structural repair financing programs whereby long-term (e.g. 30-year) amortized loans are made available to qualified condominium unit owners on an income/means basis to facilitate the financing of special assessments necessary to address life safety remediation in aging condominium buildings.

**10. Community Association Managers and Consulting Professionals:**

- a. Task Force General Findings:** Community association managers frequently coordinate and supervise maintenance, repair and replacement projects. Boards of directors and residents should be able to rely on advice of community association managers and other professionals who provide advice to the association. Community association managers should have a duty to provide specific recommendations to and advise boards and residents regarding the status of necessary maintenance, repairs and replacements. It would benefit condominium residents for community association managers to have additional continuing education requirements related to typical deferred maintenance and replacement work in condominiums.
- b. Current Law:**
- i.** Section 468.431(2), Florida Statutes, defines “community association management” to include, without limitation, negotiating monetary or performance terms of a contract subject to approval by an association, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association’s governing documents and the requirements of law as necessary to perform such practices.
  - ii.** Section 718.111(1)(d) of the Act provides that as required by section 617.0830, an agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An agent of the association shall be liable for monetary damages as provided in Section. 617.0834 if such agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in section 617.0834; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
  - iii.** Section 468.4334(1), Florida Statutes, provides that a community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under chapter 468.
  - iv.** Section 468.4334(1), Florida Statutes, provides that a community association manager and a community association management firm must discharge duties performed on behalf of the association as authorized by chapter 468 loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging



unreasonable or excessive fees.

v. Section 468.4334(2), Florida Statutes, provides that:

1. A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

a. Indemnification [under paragraph (a)] may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

vi. Section 468.426(2), Florida Statutes, provides that acts that constitute grounds for which disciplinary actions against managers may be taken include, without limitation:

1. Committing acts of gross misconduct or gross negligence in connection with the profession.

2. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association.

vii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.

c. **Relevant Considerations:** Community association management contracts and professional service contracts frequently contain waivers, limitations of liability and requirements for the community association to indemnify the management company or professional service provider, even for the negligence of the management company or professional service provider. Such waivers, limitations and indemnity requirements are not in the interests of the health, safety and welfare of condominium residents. Further, they are not equitable for community associations, which are governed by volunteer, unpaid boards of directors comprised of unit owners, rather than paid professionals.

- d. Task Force Recommendations:**
- i.** Community association managers should make specific recommendations to and advise the board regarding proper maintenance and communicating the status of maintenance to the unit owners.
  - ii.** Additional educational requirements for CAMs addressing building maintenance and life safety building components should be implemented.
  - iii.** Attempts by community association management companies and other consulting professionals to avoid liability for advice they provide or be indemnified for their own negligence or breach of their contractual obligations should be void as against public policy.

11. **Local Government Accountability:**

- a. **Task Force General Findings:** Local governments should have qualified professionals available to make recommendations to associations and to review and approve building inspection reports required for code compliance and permitting purposes. Local governments should have some level of responsibility to associations and unit owners for negligent inspections and improper building approvals.
- b. **Current Law:** In 1985, the Florida Supreme Court in *Trianon Park Condominium v. City of Hialeah*, 468 So.2d 912, held that a building department is not responsible for damages to a condominium association caused by negligent building inspections. The Court held that although a building department may enforce codes, it had no duty to ensure the proper construction of the building under the law of sovereign immunity.
- c. **Relevant Considerations:** The condominium form of ownership is unique and requires additional considerations in the carrying out of codes by local governments. A duty of care is recommended.
- d. **Task Force Recommendations:** Condominium residents should be entitled to rely on the inspections and inspection reports performed by or on behalf of local governments, and local governments should not be able to avoid responsibility for the content and conclusions of building inspection reports under the doctrine of sovereign immunity.

## 12. Association Insurance:

- a. **Task Force General Findings:** Associations need more clarity regarding insurance coverage requirements in order to protect the general health, safety and welfare of the residents of condominiums. The Act should be amended to require casualty insurance coverage for the full insurable replacement cost of the condominium property insured by the association. Additional protections to better assure the availability of funds for deductibles are also needed.
  
- b. **Current Law:** Section 718.111(11) of the Act provides that a residential condominium must be protected with adequate property insurance.
  - i. Section 718.111(11)(a) of the Act provides that adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.
  - ii. Section 718.111(11)(a)(3) of the Act provides that when determining the adequate amount of property insurance coverage, the association may consider deductibles.
  - iii. Section 718.111(11)(c) of the Act provides that policies may include deductibles as determined by the board, and the board may determine the deductible based on factors including, without limitation, the level of available funds.
  - iv. Section 718.111(11)(d) of the Act provides that an association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association.
  
- c. **Task Force Recommendations:**
  - i. The Task Force recommends that to the extent of reasonable market availability, associations must obtain casualty coverage in an amount equal to the full replacement cost, with code and ordinance coverage, and that ACV (Actual Cash Value) coverage should not be permitted.
  - ii. The Task Force recommends that to the extent of reasonable market availability, the deductible in condominium casualty insurance policies not exceed prevailing market norms in the locale of the condominium, and not otherwise materially decrease the full replacement cost coverage required to be obtained by the association.
  
- d. **Other Notes from Task Force:** Deductibles currently range on average from \$5,000-\$10,000 for property damage other than windstorm. Windstorm deductibles are typically 2-5% of the policy limits.

## **CONCLUSION**

The Task Force has determined that the lack of uniform maintenance standards or protocols, and the unguided discretion given to boards of directors to determine when, how, and if life safety inspections should be performed, requires legislative intervention. The need for such maintenance standards and a similar need for standards for credentials, content, and continuity of inspections is compelling. Condominium associations and cooperative boards have the duty to protect the life safety of all residents of each condominium and cooperative building and must be transparent in their operations including the reporting of such inspections and maintenance standards.

Condominium associations and cooperative boards must have the financial tools to fund deferred maintenance and structural repairs which will be necessary as buildings and other improvements age. Such tools must not be hindered or impaired by the unwillingness of some owners to invest in their condominium property. Thus, statutory reserves must be enhanced in their scope and well-funded over a period of time. Additionally and alternatively, other means of financing should readily be available to condominium associations and cooperative boards to fund deferred maintenance and structural repairs.

The Task Force believes that through maintenance protocols, transparency of governance and communication, regular inspections of a meaningful content, and a funding plan, the life safety of the residents of Florida condominiums and cooperatives will be enhanced and protected.

## APPENDIX A

### Task Force Meeting Dates and Presentations

<b>July 9, 2021</b> , 12:00 p.m. - 1:30 p.m.	Task Force Meeting
<b>July 14, 2021</b> , 12:00 p.m. – 2:00 p.m.	Task Force Meeting
<b>July 22, 2021</b> , 12:00 p.m. – 2:00 p.m.	Task Force Meeting
<b>July 28, 2021</b> , 12:00 p.m. – 2:00 p.m.	Task Force Meeting
<b>August 4, 2021</b> , 12:00 p.m. – 2:00 p.m.	Presentation

### Reserve Study/Funding Presentation

**Presenters-** [Dreux Isaac](#), Architect (President, Dreux Isaac & Associates, Inc.)  
[Matt Kuisle](#), Professional Engineer, PRA, RS  
(Regional Executive Director, Reserve Advisors)

**Materials-** [Outline of Issues Analyzed](#)  
[PowerPoint Presentation](#)

**August 11, 2021**, 12:00 p.m. – 2:00 p.m. Presentation

### Structural Engineering Presentation

**Presenter-** [Tom Grogan](#), Committee Chair of Licensure and former President, The Florida Structural Engineers Association

**Materials-** [PowerPoint Presentation](#)

**August 11, 2021**, 2:00 p.m. – 3:00 p.m. Task Force Meeting

**August 18, 2021**, 12:00 p.m. – 2:00 p.m. Presentation

### Insurance Presentation

**Presenters-** [Andrea Northrop](#), Esq.  
[David Thompson](#), CPCU, AAI, API, CRIS

**Materials-** [PowerPoint Presentation](#)

August 25, 2021, 12:00 p.m. – 2:00 p.m.

Presentation

**Building Officials Presentation**

**Presenters-** [Building Officials Association of Florida](#)  
[Kathy Croteau](#), President  
[Sean Flanagan](#), Treasurer (City of Coconut Creek)  
[Clay Parker](#), Past President (City of Sunny Isles)

**Materials-** [PowerPoint](#)

August 25, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 1, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

**Community Association Management Presentations; CEOMC and CAI**

**Presenters-** [CEOMC](#) (Chief Executive Officers of Management Companies)  
Josh Burkett, Anderson Consulting  
[Debbie Reinhardt](#), Resource Property Management, CEO, CFO, CMCA, AMS, PCAM

**Materials-** [PowerPoint Presentation](#)

**Presenters-** [CAI Legislative Alliance, Florida](#) (Community Association Institute)  
Travis Moore, Moore Relations, Inc.  
[Dawn Bauman](#), Senior VP of Governmental and Public Affairs

**Materials-** [Dominick Scannavino](#), LCAM  
[PowerPoint Presentation](#)

September 2, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 8, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

**Florida Association of Realtors Presentation**

**Presenters-** Trey Goldman, Esquire,  
[Wesley Ulloa](#), Realtor  
[Keith Woods](#), Realtor  
[Danielle Blake](#), Realtor

**Materials-** [Outline of Issues](#)

**Resiliency and Environmental Engineering Presentation**

**Presenter-** [Roberto Balbis, PE](#)  
[Representative Projects](#)  
**Materials-** [Report](#)

**September 8, 2021, 5:00 p.m. – 7:15 p.m.** Task Force Meeting

**September 15, 2021, 12:00 p.m.- 2:00 p.m.** Presentation

**Department of Business and Professional Regulation Presentation**

**Presenters-** [Julie I. Brown](#), Secretary, DBPR  
[CJ Aulet](#), Director, Division of Condominiums,  
Timeshares and Mobile Homes

**September 22, 2021, 12:00 p.m. – 2:00 p.m.** Task Force Meeting

**September 22, 2021, 5:00 p.m. – 7:00 p.m.** Task Force Meeting

**September 29, 2021, 12:00 p.m. - 2:00 p.m.** Task Force Meeting

**September 29, 2021, 5:00 p.m. - 7:00 p.m.** Task Force Meeting



## **APPENDIX B**

### **Observers**

- Florida Senate, Insurance & Banking Subcommittee
- Florida Senate, Regulatory Reform Subcommittee
- Florida Senate, Committee on Community Affairs
- Florida House, Commerce Committee
- Florida Department of Business and Professional Regulation
- Division of Condominiums, Timeshares and Mobile Homes
- Florida Department of Financial Services
- Miami-Dade Office of Consumer Protection
- Florida League of Cities, Inc.
- Florida Association of Realtors
- The Florida Bar

## APPENDIX C

### TASK FORCE BIOGRAPHIES

Sklar, William P.  
Adams, Joseph E.  
Blanch, Ivette Machado  
Davies, Christopher N.  
Dobrev, Alexander – Technical Advisor  
Dunbar, Peter M.  
Gelfand, Michael J.  
Hertz, Allison - Reporter  
Rodriguez, Jose A.  
Rolando, Margaret A. (“Peggy”)

**William P. Sklar, Esq.**  
**Carlton Fields**  
**Tallahassee and West Palm Beach, Florida**

**Mr. Sklar** is Of Counsel to the law firm of Carlton Fields and former Managing Partner of the West Palm Beach office of another national law firm. Mr. Sklar is Board Certified in Real Estate Law and Condominium and Planned Development Law by the Florida Bar. He received his B.B.A. (Magna Cum Laude) and J.D. from the University of Miami. He is admitted to practice in Florida and New York and the Bar of the United States Supreme Court and Eleventh Circuit Court of Appeals.

Mr. Sklar's law practice includes representation of developers and lenders in a broad range of planning, drafting and development of residential, commercial and complex mixed-use condominiums and planned developments. Additionally, Mr. Sklar serves as regulatory counsel to developers and lenders relative to compliance under numerous federal, state and local statutes, regulations and ordinances, including, for example, the Interstate Land Sales Full Disclosure Act (ILSFDA), Fair Housing Act, Florida Condominium and Homeowners Association Acts and numerous other laws and regulations affecting real estate development and transactions. Additionally, he has represented parties in a wide variety of real estate transactional and financing matters, as well as land use matters.

Mr. Sklar is an Adjunct Professor of Law at the University of Miami School of Law and a member of the faculty of the LLM graduate law program in real property, teaching courses in condominium and planned development law and a related drafting and litigation workshop since 1980. Mr. Sklar is Director of the University of Miami's Boyer Institute on Condominium and Cluster Developments.

Mr. Sklar is the co-author of a two-volume casebook, "Cases and Materials on Condominium and Cluster Housing"; and former co-editor of Professor Ralph Boyer's treatise, "Florida Real Estate Transactions"; author of "The Wrap Around Mortgage — Its Uses and Consequences"; Lawyer's Title Guaranty Fund Notes, 1979; co-author of "Commercial Condominiums: Planning and Drafting Considerations", October, 1982 Florida Bar Journal; co-author of "Garn-St. Germain Revisited", June 1984 Florida Bar Journal; Author: "1988 Survey of Florida Real Property Law", Nova Law Review, Spring, 1989; author of "Interstate Land Sales", Chapter 29 of The American Law of Real Property, 1993; author of "Concept of Condominium Ownership", Chapter 1 of Florida Condominium and Homeowner Association Law and Practice, 1996; co-author of "The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption", February, 1999, Florida-Bar Journal; co-author of "New Condominium Exemption to the Interstate Land Sales Full Disclosure Act", March 2015, Florida Bar Journal; and co-author of "Florida Community Associations vs. AIRBNB and VRBO in Florida", Florida 2017, Florida Bar Journal.

Mr. Sklar is a Supreme Court of Florida Certified Circuit and County Court Mediator. He is a member of both the Florida Bar and American Bar Association Real Property, Probate and Trust (RPPTL) Section's Committee on Condominium and Cooperative Housing; immediate past Chairman of the Condominium and Planned Development Committee of the RPPTL Section of the Florida Bar; former member of the Florida Bar Condominium and Planned Development Law Certification Committee; Former Chairman of the American Bar Association General Practice Section's Sub-Committee on Condominium and Cooperative Housing; Fellow and

member of the Board of Governors and Executive Committee of the American College of Real Estate Lawyers (ACREL), and College of Community Association Lawyers. Mr. Sklar is a member of the Executive Council of the Florida Bar Real Property, Probate and Trust Law Section and served as Co-Editor of the Section's monthly column in the Florida Bar Journal from 2000 to 2012. Mr. Sklar is a frequent lecturer to the Florida Bar Real Property, Probate and Trust Law Section, speaking at its Condominium and Planned Development Law Seminar; Legislative Update; and Real Estate Certification Review Course, as well as being a regular faculty member at the University of Miami Institute. Mr. Sklar is the recipient of the 2017 John Arthur Jones Service Award from the Florida Bar RPPTL Section. Mr. Sklar currently serves as the Chair of the Florida Bar RPPTL Section's Condominium Law and Policy Life Safety Advisory Task Force.

In 2003-2004, Mr. Sklar served as Co-Chair of Governor Bush's Homeowners Association Task Force, responsible for legislative reform of Florida's Homeowners Association Statute (Chapter 720). Mr. Sklar is a recipient of the 2002 Lynford Lardner Community Service Award, recognizing continuing leadership in community service throughout South Florida, serves as President of Genetic Information to Stop Breast and Ovarian Cancer, Inc. a non-profit organization dedicated to educating the public on the benefits of genetic testing, and is a former member of the Board of Directors of Richard Kann Melanoma Foundation dedicated to education and prevention of melanoma and other skin cancers. Mr. Sklar is the recipient of the University of Miami School of Law's 2012 Alumni Achievement Award.

# Joseph E. Adams, Esq. Becker Lawyers Ft. Myers and Naples, Florida

**Mr. Adams** has concentrated his legal practice in the area of Condominium and Planned Development Law for nearly 35 years. During his career, Mr. Adams has provided legal counsel to over one thousand community associations, primarily in Southwest Florida, where he serves as the Managing Shareholder of Becker's Naples and Fort Myers offices. Mr. Adams is a Florida Bar Board Certified Specialist in Condominium and Planned Development Law.

## RECOGNITIONS

- Martindale-Hubbell, A.V. Rated
- Florida Trend, Legal Elite Hall of Fame
- Fellow, College of Community Association Lawyers

## PROFESSIONAL ACTIVITIES

- Co-Chair; Condominium and Planned Unit Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar
- Former Chair; Florida Bar Condominium and Planned Development Certification Committee
- Former Chair; Florida Advisory Council on Condominiums
- Former Chair; Community Associations Institute, Florida Legislative Alliance
- Former Member; Governor's Task Force on Homeowners' Association Legislation

Mr. Adams is a frequent writer, speaker, and legislative contributor regarding Florida condominium and planned development law. In addition to 3 published law review articles, Mr. Adams has published numerous articles, including "Defending ~~My~~Our Castle (A Look at Gun Regulation by Community Associations)," The Florida Bar Journal (December 2016). His writings have been cited in Florida's appellate courts and in the Florida Statutes Annotated as legal authority. He has also been the author of a weekly newspaper column/blog involving community association law since 1996.

**Ivette Machado Blanch, Esq.  
Siegfried Rivera  
Miami, Florida**

**Ivette Machado Blanch** is a shareholder of Siegfried Rivera who specializes in Condominium Law and Community Association Law.

While at the University of Miami School of Law, she served as an Articles and Comments Editor for the University of Miami Business Law Review. Additionally, she participated in the University of Miami Academic Achievement Program, where she served as a Dean's Fellow for Constitutional Criminal Procedure. Ms. Blanch is a member of the Order of Coif. She is admitted to the Florida Bar and is currently a member of the Cuban American Bar Association. In addition, Ms. Blanch co-authored a chapter in the Third Edition of the Florida Condominium and Community Association Law Manual published by The Florida Bar, entitled "The Role of the Association In Condominium Operations."

**Christopher N. Davies, Esq.**  
**Dentons Cohen & Grigsby, PC**  
**Naples, Florida**

**Mr. Davies** has focused his practice on providing advice to condominium, cooperative and homeowner associations in Southwest Florida for the past three decades. Chris is a Director at Dentons Cohen & Grigsby, PC, and is Chair of the Firm's Florida Real Estate Practice Group. He is the past Chair of The Florida Bar's Board Certification Committee in Condominium and Planned Development Law. He served as former Vice Chair of The Florida Bar Condominium and Planned Development Law Committee for several years.

Chris was appointed to the Florida Condominium Study Commission by Governor Bob Martinez in 1990, and worked on the extensive revisions to the condominium laws at that time. He has been a member of the faculty of the University of Miami Law Center Institute on Condominium and Cluster Developments on numerous occasions.

# Alexander Dobrev, Esq.

## Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

### Orlando, Florida

**Alex Dobrev** is a Shareholder and chairs the firm's Multifamily & Condominium Group. He also serves as the Vice-Chair of the Condominium & Planned Development Committee of the Florida Bar, as well as its legislative Chair.

Since the recession, Alex has focused a substantial portion of his practice on distressed properties acquisitions, operations and dispositions. In the context of "broken" or "fractured" condominium projects in particular, he often works with lenders, bulk investors, and receivers, in order to evaluate and implement exit strategies, including possible unwinding of the condominium regime, while identifying and minimizing potential successor developer liabilities and related risks.

In addition, Alex counsels clients regarding Interstate Land Sales Full Disclosure Act (ILSA) compliance matters, including full and partial exemptions from the Act and overall offering structure.

#### RECOGNITION

- Listed in *Best Lawyers in America* 2014-2020
- 2018 Rising Star Award by the Real Property, Probate and Trust Law Section of The Florida Bar
- Recognized as "Florida's Legal Elite," 2017 by Florida Trend Magazine
- Recognized as a Florida Legal Elite "Up & Comer," 2011-2012 by *Florida Trend Magazine*
- Recognized as "Florida Super Lawyers" 2018 by Super Lawyers Magazine
- Recognized as "Florida Rising Stars" 2011 by Super Lawyers Magazine
- *Orlando Business Journal's* 10 Businessmen to Watch 2010
- Highlighted in the *Legal 500*, 2010

#### PROFESSIONAL CERTIFICATIONS & MEMBERSHIPS

- Vice Chair and Legislative Chair, Condominium & Planned Development Committee of Real Property, Probate and Trust Law Section of the Florida Bar
- Executive Council Member, Real Property, Probate and Trust Law Section of the Florida Bar
- Board of Directors, NAIOP, the Commercial Real Estate Development Association, Central Florida Chapter 2004-2010
- Orange County Bar Association
- The Florida Bar
- American Bar Association
- Meritas Leadership Institute 2011

#### Admitted

- The Florida Bar, 2001

#### Education

- Georgetown University Law Center (2001)
- Duke University (*magna cum laude*, 1998)



**Peter M. Dunbar, Esq.  
Dean Mead & Dunbar  
Tallahassee, Florida**

**Peter M. Dunbar** is managing shareholder of Dean, Mead & Dunbar's Tallahassee office. Mr. Dunbar's practice focuses on governmental, administrative, and real property law. He began his long career in Florida government in 1967 as staff director in the Florida House of Representatives. Mr. Dunbar later served for five terms as a distinguished member of the Florida House representing Pinellas and Pasco counties in the Florida Legislature. Upon leaving the Legislature, he held the posts of General Counsel and Director of Legislative Affairs under Governor Bob Martinez and as General Counsel at the Department of Financial Services. Mr. Dunbar served as Chief of Staff during the transition from the Martinez administration to the administration of Governor Lawton Chiles, and he is former Chairman and two-term member of the Florida Ethics Commission. Currently, Mr. Dunbar serves on the inaugural committee for the Condominium and Planned Development Law Certification for The Florida Bar.

Mr. Dunbar was admitted to the Florida Bar in 1972. He is a member of the American College of Real Estate Lawyers, an adjunct professor at Florida State University College of Law, and has recently been selected by his peers as a member of Florida Trend's Florida Legal Elite Hall of Fame.

# Michael J. Gelfand, Esq. Gelfand & Arpe West Palm Beach, Florida

**Michael J. Gelfand**, is dual Florida Bar Board Certified, in Real Estate Law and in Condominium and Planned Development Law. He is also a Certified Circuit and County Civil Court Mediator, Homeowners Association Mediator, Arbitrator, and Parliamentarian.

Michael Gelfand, is the senior partner of Gelfand & Arpe, P.A. Located in West Palm Beach, his firm emphasizes a community association law practice, counseling associations and owners how to set legitimate goals and how to effectively achieve those goals.

Mr. Gelfand is a Past Chair of The Florida Bar's Real Property, Probate and Trust Law Section, the Bar's largest section with over 10,000 members. He served as the Section's Real Property Division Director and chaired the Legislative Review Committee and Condominium and Planned Development Committee. He also chaired the Palm Beach County Bar's Community Association Law Continuing Legal Education Committee.

He served many terms as Special Master for the City of Boca Raton after chairing the City's Builders Board of Adjustment and Appeals, receiving a City Proclamation for "interpretation and application, and his overall professionalism and dedication to the City." He received a gubernatorial appointment to the Fifteenth Circuit Judicial Nominating Commission. Mr. Gelfand co-owned ARC Mediation, Palm Beach County's largest mediation and arbitration firm, for over a decade.

Michael Gelfand is a sought-after community association law commentator, including presentations for the American Bar Association, American Legal Institute, American College of Real Estate Lawyers, The Florida Bar, the University of Miami and the Chautauqua Institute, among others.

His acclaimed writings include *The Plaza East Trilogy: Not a Nursery Rhyme, but Scary Warfare*, *The Florida Bar Journal*, analyzing the collision between hurricanes and Florida's condominium property insurance legislation. The Florida Bar has published his works including "Alternate Dispute Resolution, Arbitration and Mediation" and "Condominium and Homeowner Association Liens" and many statutory updates.

Mr. Gelfand's national recognition includes induction into the College of Community Association Lawyers, and as a Fellow of the renowned American College of Real Estate Lawyers, including serving as Chair of ACREL's Common Interest Ownership Committee.

Michael Gelfand believes in personal community involvement, encouraging all to become involved in their communities. A recipient of the Palm Beach County *Pro Bono* Child Advocate of the Year Award, his public school volunteer efforts include serving as the real estate/construction appointee on the Palm Beach County School District's Construction Oversight and Review Committee, and as a magistrate for the District's Law Magnet Program. He also chaired the Youth Orchestra of Palm Beach County, Florida.

**P: 561-655-6224** [MJGelfand@gelfandarpe.com](mailto:MJGelfand@gelfandarpe.com) [www.GELFANDARPE.com](http://www.GELFANDARPE.com)

**Allison Hertz, Esquire  
Kaye, Bender, Rembaum  
Palm Beach Gardens, Florida**

**Allison L. Hertz** is a shareholder at Kaye, Bender Rembaum, and is Board Certified in Condominium and Planned Development Law. Ms. Hertz has exclusively represented community associations and unit owners since being admitted to the Florida Bar in 2007 and is a Palm Beach County native. She graduated from Rollins College in 2004, and Nova Southeastern University Shepard Broad Law Center in 2007. Ms. Hertz enjoys public speaking, including providing Board Certification Courses to volunteer board members, and providing continuing education courses to property managers. Ms. Hertz is an active member of the Florida Bar's Condominium & Planned Development Committee, and she is currently the Co-Vice Chair for the Committee. She is also the Vice Chair of the Condominium & Planned Development Law Certification Review Committee. She was recently the Chair of the Condominium & Planned Development Committee's Hurricane Protection Subcommittee and a member of the Committee's Emergency Powers Task Force. She also serves on the Committee's Legislative and Nonresidential/Mixed Use Condominium Subcommittees. Ms. Hertz prides herself on providing a practical, real-world approach to solving her clients' legal issues.

**Jose A. Rodriguez**  
**Rennert Vogel Mandler & Rodriguez**  
**Miami, Florida**

**Jose A. Rodriguez** has a diverse practice focusing primarily on real estate and corporate law. He has extensive experience dealing with the needs of Latin American and international clients and represents several prominent South Florida real estate developers and high net worth entrepreneurs. He has dedicated himself to structuring complex business and real estate ventures, corporate matters, work-outs of distressed real property and coordinating the closings of real estate related financing. Mr. Rodriguez takes a practical, goal-oriented approach to complex business and real estate ventures, which has assisted his clients in accomplishing their unique objectives.

Mr. Rodriguez received his B.S. from Florida State University and J.D. with Honors from Nova Southeastern University.

# Margaret A. Rolando Shutts & Bowen, LLP Miami, Florida

**Margaret A. (“Peggy”) Rolando** has been a partner in Shutts & Bowen’s real estate department since 1984. She is Board Certified in Real Estate and Condominium and Planned Development Law and is “AV” rated. Ms. Rolando was a Co-Chair of the Board of Governors of the American College of Real Estate Lawyers (ACREL) and past chair (2013-14) of the Real Property, Probate and Trust Law Section of The Florida Bar. She was also a member of The Florida Bar Committee on Condominiums and Planned Developments. She is a member of the Condominium and Planned Development Law Certification Committee and served as Chair during its inaugural term, 2016-2018.

Ms. Rolando has extensive experience in the acquisition, development, sale, financing and operation of large scale real estate projects. She regularly counsels clients on the creation and operation of condominiums, planned developments, mixed use projects, resorts, clubs and hotels, including regulatory matters, development, structuring, restructuring, documentation, termination and management. She has particular expertise in termination of condominiums having chaired or participated in the subcommittees responsible for drafting proposed statutory revisions to the termination provisions in the Florida Condominium Act and represents clients in pursuing efficient and effective termination strategies.

Ms. Rolando was a co-presenter on “Structuring and Operating Phase and Series (Multi-Condominium) Condominium Developments” at the Institute on Condominiums and Cluster Developments, sponsored by University of Miami School of Law in 2018. She has also spoken at the Institute on condominium terminations in 2015 on “Condominium Reversions - The Unspoken Condominium Termination Opportunity - Issues, Policies and Solutions - Recent Statutory Developments,” in 2014 on “Condominium Termination: Challenges, Issues and Unique Fact Patterns,” in 2008 on “Termination: Effects of New Legislation on Condo Regimes – Natural vs. Developer-Made Disasters and Fixes,” and in 2005 on “Termination Issues & Proposed Solutions – Facilitating Reconstruction and Redevelopment.”

Peggy has lectured on “Condominium Construction Loans” at the seminar *The Ins and Outs of Community Association Law 2017* sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Condominium and Planned Development Committee. She is a respected speaker at the national level on development, workouts and structuring of condominiums and planned developments. She served on the faculty of the advanced seminar “Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments” sponsored by the American Law Institute-American Bar Association (ALI-ABA) in 2005-2009. She planned and presented an ALI-ABA seminar in 2012 on “Bulk Sales and Purchases of Distressed Condominium Units.” She also participated in two ALI-ABA seminars in 2009, one on “Condos & Planned Communities: Bulk Sale of Units, Homes and Lots in Today’s Shifting Economy” and another on “ILSA [Interstate Land Sales Full Disclosure Act]: The Sword and Shield of Residential Real Estate Contracts.” She spoke on “The Condo Glut - A Survival Guide for Condominium Workouts” at the Fall 2007 meeting of ACREL. Ms. Rolando lectured at several seminars on workouts of distressed

condominium projects, including webinars in 2007 and 2008 sponsored by ALI-ABA.

Her publications include articles in *The Practical Real Estate Lawyer* on "Making and Encouraging Pre-Sale Disclosures" (July, 2007) and on "Governing Documents for Mixed Use Developments" (January, 2006). She also co-authored "Planning and Structuring Real Estate Developments Using Condominium and Owners' Associations," Chapter 3 (formerly Chapter 2) of *Florida Condominium and Community Association Law* published by The Florida Bar (2007, revised 2011, 2015 and 2018).

Ms. Rolando graduated *magna cum laude* from Spring Hill College and received her M.A. and J.D. with honors from Florida State University.

## **APPENDIX D**

### **Presentations and Biographies**

Building Officials Association of Florida – Presentation to Florida Bar Condominium Law & Policy  
Taskforce on Safety: 40-Year Recertification of Buildings

Co-Presenters

Kathleen Croteau, BOAF President, CAP Government

Clay Parker, BOAF Past President, City of Sunny Isles Beach (Miami-Dade County)

Sean Flanagan, BOAF Treasurer, City of Coconut Creek (Broward County)

Presentation Outline

1. Recertification of Buildings
2. Notification Process
3. Notification Process Timeline
4. Building Department Process
5. Findings
6. Lack of Compliance



## Kathleen Croteau

Kathleen Croteau is a Building Official and Certified Floodplain Manager for CAP Government, Inc. and the current president for the Building Officials Association of Florida (BOAF). Kathleen was the State of Florida Building Official of the year in 2020 and serves on International Code Councils (ICC) Damage Assessment committee and BOAF's Mutual Aid Chair. Previously Kathleen was the president of a structural steel and ornamental iron company for 15 years, Deputy Building Official of the City of Cape Coral and Building Official for Sarasota County.

## Sean Flanagan

Deputy Building Official  
City of Coconut Creek  
4800 W. Copans Road  
Coconut Creek, FL 33063  
954-973-6750  
954-956-1517 fax  
[www.coconutcreek.net](http://www.coconutcreek.net)

Sean is the Deputy Building Official in Coconut Creek, Fl. where he has spent the last fourteen years of his over twenty year career in building code enforcement. Sean started his tenure at Coconut Creek as an Inspector/ Plans Examiner, advancing to Chief Structural Inspector and then to Deputy Building Official in 2014. In addition to his duties as Deputy Building Official, Sean serves on the City's Development Review Committee, Green Initiative and City Projects Committees. He has developed a career path program for an Apprentice Structural Inspector and serves as a mentor to junior inspectors and plans examiners. Sean started in the construction industry 45 years ago, beginning as a Mason Tender until starting his building code inspector career at the City of Coral Springs, Fl.

Outside of his duties at Coconut Creek, he has been an active member of the Broward Chapter (BOIEA) for the past twenty years. He has served on the Board of Directors for ten years; Treasurer for five years; 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Vice Presidents; President in 2019; Current Past President. He has served on the following Broward Chapter committees – Education; By Laws; Legislative Affairs; Scholarship; Building Safety Month; Annual Picnic/Barbeque. Sean has also served on the Broward County Permitting Action Team, Broward County MOT Accessibility Workshop and Governors Workforce Taskforce Workshop. Currently Sean is the BOAF Executive Board Committee Treasurer and serving on the BOAF Legislative Affairs Committee.

Sean lives in Boca Raton, FL. When not at work he enjoys playing golf and spending time with parents and sister who have recently relocated from New Jersey.

### EDUCATION & CREDENTIALS

Florida Standard Inspector License BN 3912

Florida Standard Plans Examiner License PX 2218

Florida Building Code Administrator License BU 2048

Florida Certified General Contractor License CGC 060821

Bachelors of Science Degree in Mathematical Physics 1988

Broward County, FL. Plans Examiner of the Year 2017

Broward Chapter BOIEA Honorary Lifetime Member 2019

International Code Council (ICC) Leadership Award 2019

**Clayton Parker**

I have been in the Construction industry for over 60 years, starting with my enlistment into the U.S. Army at the age of 18, where I was in the Combat Engineers, building bridges, barracks, airfield runways, etc. Worked as a laborer (union) and eventually became a Journeyman (union) carpenter, doing all phases of construction from single family residence to commercial residential (high-rise) and commercial.

Became Florida Certified General Contractor 46 years ago in 1975 and remain current.

I have been actively employed in local government for the last 38 years with two jobs.

Was Certified as Building Inspector, Plan Examiner and Building Code Administrator during my employment at the City of Fort Lauderdale from 1983 to 2000. My last title before retirement was Assistant Building Official.

I am currently employed by the City of Sunny Isles Beach as their Chief Building Official and have no plans for retirement.

**Organizations,**

Currently a Technical Advisor to the Executive Board of the (BOAF) Building Officials Association of Florida Previous Five years served every position of the Executive Board, Secretary, Treasurer, Vice President, President and Past President.

Served every position of the (SFBOA) South Florida Building Officials Association, a chapter of the BOAF.

# **Building Officials Association of Florida**

**Kathleen Croteau, BOAF President**  
CAP Government

**Clay Parker, BOAF Past President**  
City of Sunny Isles Beach (Miami-Dade County)

**Sean Flanagan, BOAF Treasurer**  
City of Coconut Creek (Broward County)





# 40-Year Recertification of Buildings

Text here



# Recertification of Buildings

## Broward and Miami Dade Counties

- 40 year-Structural condition inspection and report
- Inspection to confirm general structural and electrical condition
- Letter of Acceptance issued when safe for continued occupancy



# Notification Process

- Annual Notification from property appraiser
- Building Official sends Notice of Required Inspection to property owner(s)
- Property owners 90 Day compliance period to submit signed and sealed inspection report



# Notification Process

## BROWARD COUNTY BUILDING SAFETY INSPECTION PROGRAM YEARLY SCHEDULE

- **JUNE** (*Preceding the specified calendar year*)  
Board of Rules and Appeals obtains building data from Property Appraisers Office and forwards it to each city.
- **JUNE – AUGUST**  
Building Officials must notify property owners whose buildings are subject to the Safety Inspection Program for the specified calendar year.
- **SEPTEMBER – OCTOBER – NOVEMBER** (*No later than*)  
90 day period for property owners to return structural and electrical check list to the City/County
- **DECEMBER through MAY** (*No later than*)  
180 day period of time for those buildings requiring structural or electrical repairs to complete the work.





# Building Department Process

- Report received by Building Official's office, file created
- Report evaluated by Building Official's office
- Results of report documented in permit file



# Findings

- If compliant, Letter of Acceptance mailed
- If remediation work is outlined in report, permit is obtained
- Permit is tracked until proposed work is completed and a Letter of Acceptance is issued



# Lack of Compliance

- Notice of Violation issued to property owner
- Special Magistrate quasi-judicial enforcement process
- Unsafe recommendation building posted
- Imminent Danger building evacuated



# Questions





# STRUCTURAL ENGINEERING LICENSURE FOR FLORIDA

Prepared for Florida Bar Association

By Thomas A. Grogan Jr., PE

FSEA Licensure Committee Chair

08.11.2021

**IN THE  
BEGINNING...**

..

- **THERE WERE TWO TYPES OF ENGINEERING:**
  - **CIVIL**
  - **MILITARY**
  
- **AS TIME WENT ON AND MORE DISCIPLINES WERE DEVELOPED WE THEN ADDED:**
  - **CHEMICAL**
  - **CONTROL SYSTEMS**
  - **MECHANICAL**
  - **ELECTRICAL**
  - **FIRE PROTECTION**
  - **NUCLEAR**
  - **PETROLEUM**



**IN THE  
BEGINNING...**

..

- **CIVIL AND MILITARY BOTH INCLUDED:**

- **ROADS**
- **BRIDGES**
- **TRAFFIC PLANNING**
- **LAND DEVELOPMENT**
- **SURVEYING**
- **WATER/WASTEWATER**
- **GEOTECHNICAL**
- **ENVIRONMENTAL**
- **STRUCTURAL**

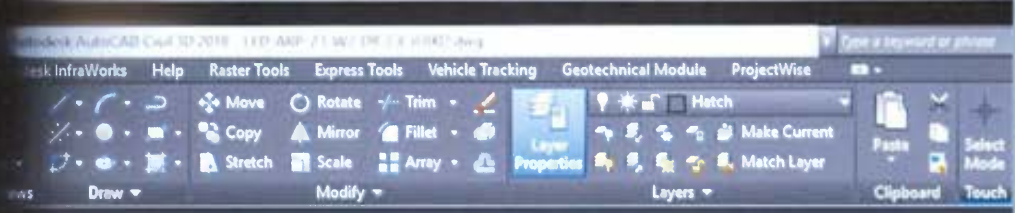


**WHY CREATE A PROFESSIONAL  
STRUCTURAL ENGINEERING  
LICENSE  
IN FLORIDA?**

**TO PROTECT  
THE HEALTH,  
SAFETY AND  
WELFARE OF  
OUR PUBLIC**







**PROTECT FROM WHAT?**

400 (note 5) 400 (note 5)  
Min. 11800  
Weir Length

Min. 11800  
Weir Length

Min. 12400  
Min. 6200

Min. 8200

Min. 6200

Existing weir to be demolished



**UNQUALIFIED PROFESSIONALS**

**INEXPERIENCED PROFESSIONALS WITH CURRENT / NEW CODES**

**COSTLY FAILURES**





**OTHER REASONS**

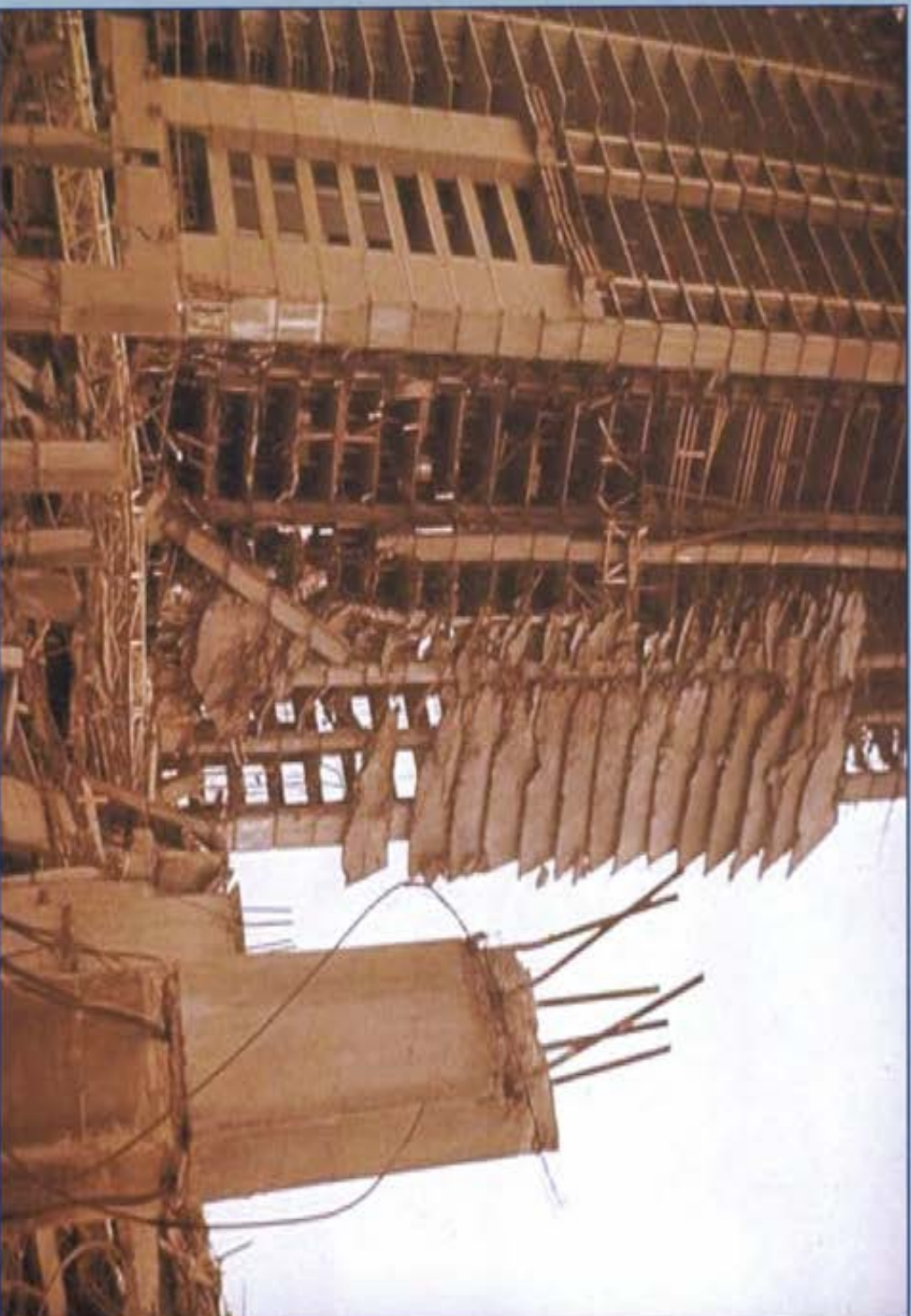
**DECREASE IN  
ENGINEERING  
EDUCATION  
REQUIREMENTS**

**ADVANCED DESIGN  
SOFTWARE USED BY  
LESS-QUALIFIED  
ENGINEERS**

**INADEQUATE  
STRUCTURAL PLAN  
REVIEWS**



# NATIONAL STRUCTURAL FAILURES



**SKYLINE PLAZA**  
BAILEY'S CROSSROADS, VA  
MARCH 2, 1973



# NATIONAL STRUCTURAL FAILURES



**HYATT REGENCY HOTEL**  
KANSAS CITY, MO  
JULY 17, 1981



# NATIONAL STRUCTURAL FAILURES



**CIVIC CENTER COLISEUM**

**HEARTFORD, CT**

**JANUARY 18, 1987**



# NATIONAL STRUCTURAL FAILURES



**HARD ROCK HOTEL**

**NEW ORLEANS, LA**

**OCTOBER 12, 2019**



# STRUCTURAL FAILURES IN FLORIDA



**SEA BASE BOY SCOUT CAMP**  
ISLAMORADA, FL  
FEBRUARY 2, 1988

# STRUCTURAL FAILURES IN FLORIDA



**TURNER AGRI-CIVIC CENTER**  
ARCADIA, FL  
AUGUST 12, 2004





# STRUCTURAL FAILURES IN FLORIDA



**THE HARBOUR CAY CONDO**

**COCOA BEACH, FL**

**MARCH 27, 1981**



# STRUCTURAL FAILURES IN FLORIDA



**BERKMAN PLAZA II PARKING GARAGE**

JACKSONVILLE, FL  
DECEMBER 6, 2007



# ***FLORIDA BUILDINGS THAT PERFORMED POORLY***



**OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)**

**LEE COUNTY HOSPITAL**  
6 STORY HOSPITAL

**HENDRY COUNTY SHERRIF'S  
OFFICE**  
CLEWISTON

- **HURRICANE CHARLEY:** THE WATER INTRUSION FROM THE ROOF, EXTERIOR CLADDING AND WINDOWS CAUSED THE ENTIRE HOSPITAL TO BE EVACUATED.
- THE BUILDING WAS SHUT DOWN DUE TO HURRICANE DAMAGE AND WAS NEVER OCCUPIED AGAIN BY THE SHERRIF'S OFFICE



**OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY  
VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES  
NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)**

**CHARLOTTE COUNTY  
EMERGENCY OPERATIONS  
CENTER (EOC)**

**CITY OF PANAMA CITY  
MUNICIPAL CENTER  
INCLUDING THE BUILDING  
DEPARTMENT  
PANAMA CITY, FL**

**PORT CHARLOTTE MUNICIPAL  
CENTER  
INCLUDING THE BUILDING  
DEPARTMENT**



**OTHER FLORIDA STRUCTURES RENDERED INOPERABLE BY  
VARIOUS HURRICANE WIND EVENTS (ALL OF THESE FACILITIES  
NEED TO BE 100% OPERATIONAL AFTER THESE TYPES OF EVENTS)**

**FIRE STATION  
CITY OF PORT CHARLOTTE**

**SEVERAL SCHOOLS IN  
CHARLOTTE COUNTY, LEE  
COUNTY, BAY COUNTY,  
HENDRY COUNTY  
BEING USED AS EMERGENCY  
EVACUATION CENTERS**

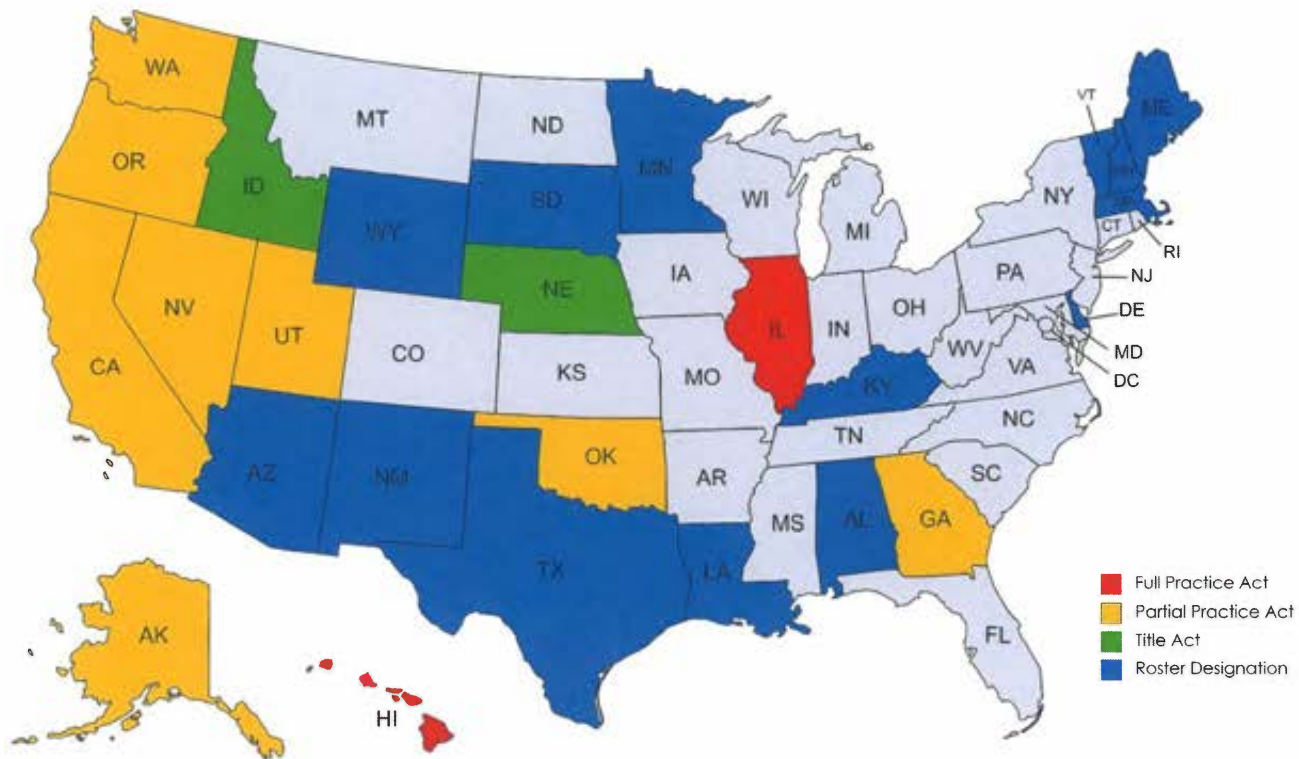




# HISTORY OF STRUCTURAL LICENSING



# CURRENT STATUS OF OTHER STATES







## STATES WORKING INITIATING OR UPDATING SE LICENSE



# OTHER INTERESTING FACTS

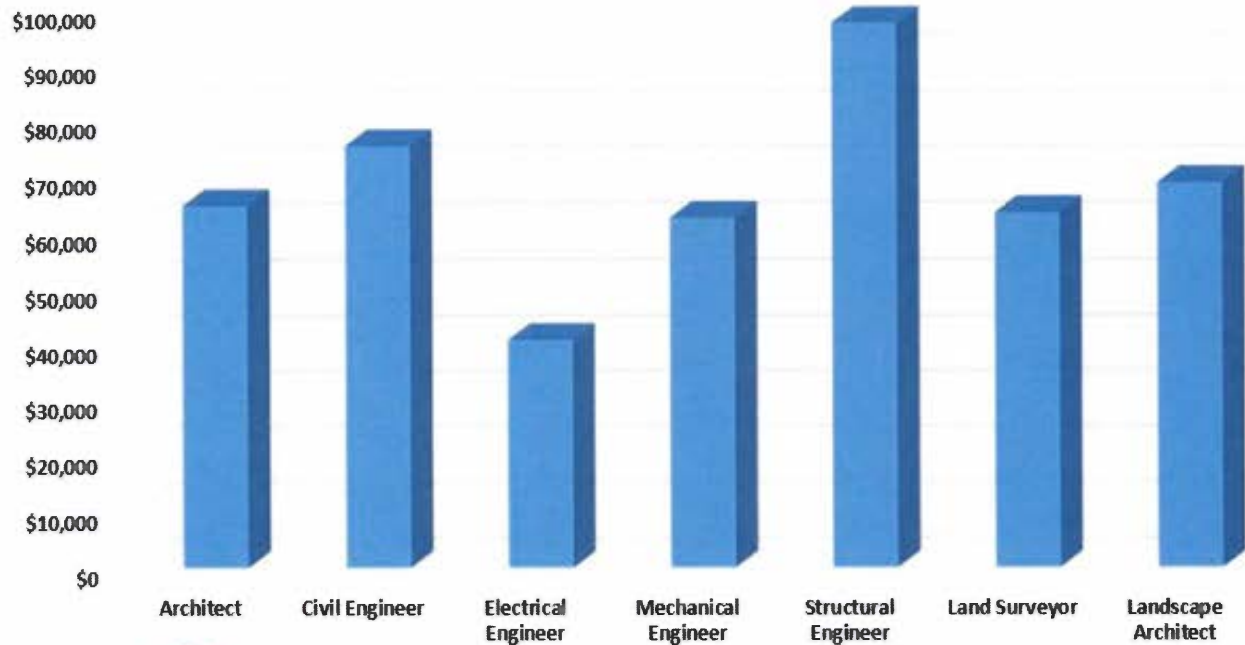
OVER THE PAST 30 YEARS, MORE THAN 275\* P.E.s HAVE BEEN DISCIPLINED BY THE FLORIDA BOARD OF PROFESSIONAL ENGINEERS FOR PRACTICING S.E. OUTSIDE THEIR AREA OF COMPETENCY CAUSING A MAJOR PROBLEM FOR THE BOARD.

**THIS LICENSE, SUPPORTED BY THE BOARD,  
WILL CORRECT THIS ISSUE**

*\* A significant percentage of all disciplined engineers*



### Average Claim Severity 2011-2017



Source: Travelers DPL Claim Data

## OTHER INTERESTING FACTS





SIMPLE



SUBMIT AN AFFIDAVIT  
ATTESTING TO STRUCTURAL  
ENGINEERING EXPERIENCE /  
COMPETENCY TO FBPE.



THERE WILL BE A  
ONE-YEAR  
GRANDFATHERING  
PERIOD.



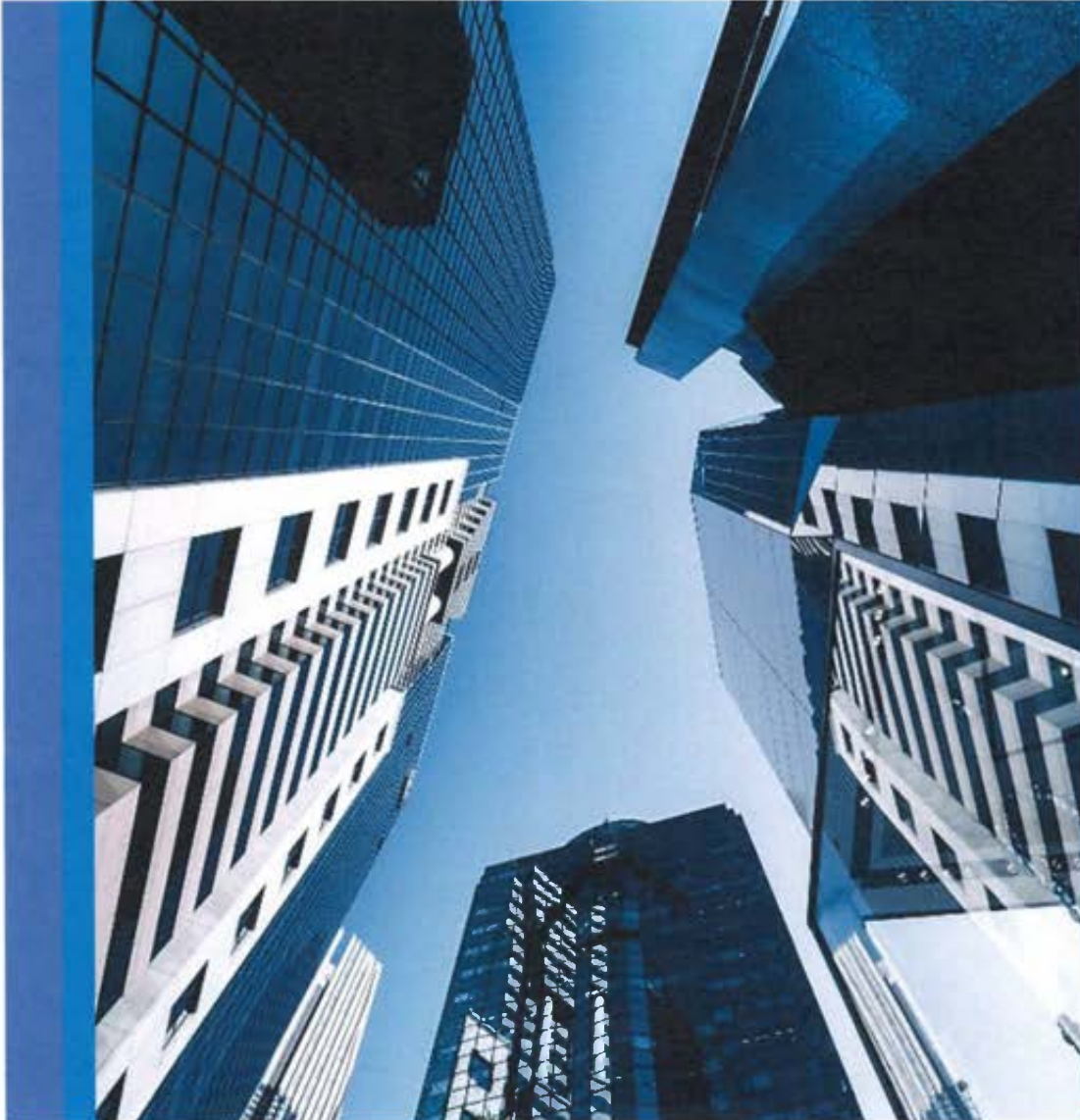
# REGISTRATION PROCESS





# STRUCTURAL ENGINEERING LICENSURE FOR FLORIDA

## Q & A



# Reserves and Reserve Studies

A report for the Florida Condominium  
Law and Policy Life Safety Advisory  
Task Force



## Overview

- The role of a reserve study and how it is prepared
- What can a reserve study can tell us
- Who's qualified to do a reserve study
- Recommended changes to Florida's condominium law on reserves
- Closing



## **Dreux Isaac**

**Architect**

**32 Years of RS Experience  
2,000+ Florida Association Clients**



## **Matt Kuisle**

**Civil Engineer**

**21 Years of RS Experience  
2,000+ Florida Association Clients**



## **Dreux Isaac**

Dreux Isaac is President of Dreux Isaac & Associates, a company started in 1989 that specializes in performing reserve studies and insurance appraisals. Dreux has over 38 years of experience in the construction industry as a reserve study analyst, insurance value appraiser, architect, draftsman, and estimator.

In addition to performing thousands of reserve studies and insurance appraisals over the past 32 years Dreux has been a speaker at industry seminars, continuing education courses, and various organization meetings involved in the resort and community association industry, as well as a guest on local TV shows.



Born and raised in New Orleans, Dreux earned his Bachelor of Architecture degree from LSU. Dreux has been a member of the American Association of Cost Engineers, the American Society of Appraisers, Association of Construction Inspectors, Jaycees International, and the Foundation for Architectural Education at LSU.

Dreux is current president of his homeowners association and was past president at the homeowners association where he previously lived.

Dreux currently resides in Winter Park, Florida with his wife of 25+ years where they have raised their three boys.

## **Matthew C. Kuisle, P.E., RS, PRA**

Matthew C. Kuisle is a Director and Shareholder of Reserve Advisors, Inc. Mr. Kuisle is responsible for the overall management and administration of the firm's Southeast regional office in Tampa, FL. He oversees sales, business development and engineering production staff serving Florida, Georgia, Tennessee and the Carolinas. Mr. Kuisle has conducted hundreds of reserve study assignments throughout the country and frequently conducts reviews of studies conducted by the firm's engineering staff.



Mr. Kuisle is a frequent author for the Florida Community Association Journal and Community Associations Institute (CAI) chapter publications. He regularly speaks on topics such as: What to Look for In A Professional Reserve Study, Planning for Future Capital Projects, and the Cash Flow (Pooling) and Component Methods of Reserve Funding. Mr. Kuisle has conducted seminars for several CAI chapters, the Club Managers Association of America (CMAA), the Florida Institute of Certified Public Accountants (FICPA) and numerous other community association management organizations. He is also a Florida-licensed Continuing Education Provider for Community Association Managers.

Before joining Reserve Advisors, Inc., Mr. Kuisle attended Marquette University in Milwaukee, Wisconsin where he received a bachelor's degree in Civil in Environmental Engineering. Mr. Kuisle is a Professional Engineer, licensed in Florida since 2006 and also holds both the Reserve Specialist (RS) and Professional Reserve Analyst (PRA) Designations.

Mr. Kuisle is the former President of his condominium association in Tampa, where he served on the board for 14 years. He enjoys fishing, camping and spending time with his wife and their two young children.

## What is a Reserve Study

- Budget Planning Tool
- Identifies components that will require replacement or maintenance
- Provides a **STABLE** and **EQUITABLE** funding plan



- It is **NOT** an invasive engineering report, safety inspection report, construction deficiency or code violation report
- Independent and inexpensive

# What is included in a reserve study?



National Reserve Study Standards

## Four Part Test

### Association Responsibility

*Element must be maintained and the responsibility of the Association*

### Limited useful life expectancy

*A useful life that is limited in nature and requiring replacement in the scope of the study (30 years)*

### Predictable remaining useful life expectancy

*A remaining useful life that can be reliably predicted*

### Above a minimum threshold cost

*Expense must be above a minimum cost threshold, below which it would not have a material effect on the reserve funding*

# What structural and life safety components are included?



**Structural restoration**

Balconies, railings, plaza deck membranes, facades, sealants and waterproofing



**Plumbing**

Domestic water, sanitary, HVAC and drainage



**Electrical**

Distribution equipment, wiring, emergency generators, elevators, emergency lighting



**Life Safety Systems**

Fire alarm control panels and equipment, suppression systems, fire pumps, smoke evacuation, security



## Cost and Life Valuations

Bids, historical costs and data - comps

Consider age, materials and conditions

Location, access and environment

Maintenance and repair history

## Condition Assessment

Visual observation of the component

Review maintenance, use & repair history

Discuss with building engineer and other personnel

No material testing is performed (destructive or non-destructive)



## What can a Reserve Study tell us?

- An inventory of major components
- A regular physical exam or “checkup” - an early detector
- Projection of reserve income and expenses
- A consistent, stable and continuous plan despite turnover and

- Documentation of historical conditions
- First line of defense on when to call in the specialists
- A path to better financial health



# Who is qualified to do a Reserve Study?



## Existing state licenses

- Professional Engineers
- Architects

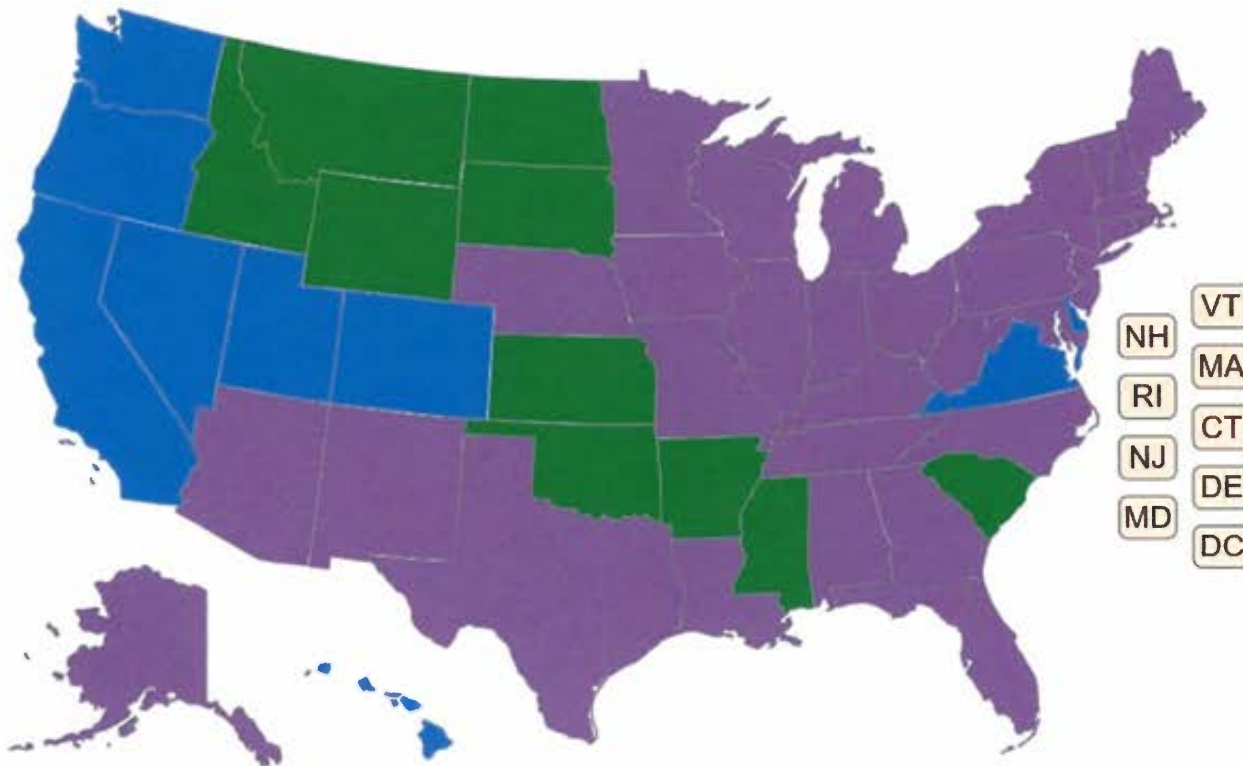


## Professional Designations

- Community Associations Institute's (CAI's) Reserve Specialist designation (RS)
- Association of Professional Reserve Analysts' (APRAs) Professional Reserve Analyst designation (PRA)



- **Blue states** have a reserve study requirement.
- **Purple states** have statutory guidance for reserves, but do not have a statutory requirement.
- **Green states** do not have statutory guidance or a statutory requirement of a reserve study.



Source:  
CAonline.org

## Recommended Changes



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Make reserve studies  
with site visits required  
every 36 months

Require preparation by  
an licensed Engineer,  
Architect, Reserve  
Specialist or  
Professional Reserve  
Analyst



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Increase the threshold  
to \$25,000 or 10% of  
the annual budget -  
remove the specific  
components that must  
be included.

Require communities  
to follow professional  
advice, remove ability  
to waive (phase in over  
5 years)



## Recommended Changes



Revise Administrative Code section which allows associations to circumvent the threshold amount by dividing assets into smaller dollar amounts – 61B-22.005(1).

Require Developers to fully fund reserves from the beginning.



Clarify balloon payment definition in Florida Administrative Code – Section 61B-22.005(3)(b).

Consider restricted use of existing pooled reserve funds on “non-essential” reserve expenses (i.e. decorating).



## Conclusion



- Regular reserve studies can identify physical issues and prepare a board to financially accomplish remediation.
- This ultimately leads to lower costs over the life of the association
- Funding reserves is the most equitable way for all owners to understand and share in the true cost of ownership.
- Professional reserve studies make a volunteer Board's job easier
- Reserves should be viewed as a pay-as-you-go expense



# Thank you

Dreux Isaac

Matt Kuisle

# Policy Discussion Following Champlain Tower South Condo Collapse



**Dominick Scannavino**

President & CEO, Management Associates  
Oldsmar, Florida



**Dawn M. Bauman, CAE**

SVP, Government & Public Affairs  
Executive Director, Foundation for Community  
Association Research

PRELIMINARY CONVERSATION  
FINAL RECOMMENDATION

**Community Associations  
Institute**



## Dominick Scannavino, President

Founder and President of Management and Associates, Dominick Scannavino, CMCA, and graduate from St. John's University in New York. He holds office as President for the Council of Neighborhood Associations, is a delegate for CAI-FLA (Community Association Institute Florida Legislative Alliance) and is a Board Certified Instructor. Dominick Scannavino and his team have a plethora of association management experience, having maintained more than 25,000 estates internationally. During his 40 years building Management and Associates, has assembled a team of experts who are educated, licensed and experienced in the services they provide.



## Dawn M. Bauman, CAE

**Senior Vice President, Government & Public Affairs  
Executive Director, Foundation for Community  
Association Research**

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Twitter: @CaiAdvocacy

Facebook: @CAISocial

LinkedIn: <https://www.linkedin.com/in/dawnbauman/>

Dawn M. Bauman, CAI's senior vice president of government and public affairs and the executive director of the Foundation for Community Association Research, has worked for CAI for nearly 20 years at both the international and chapter level. Bauman and her team have produced nearly fifty public policy initiatives impacting the community associations housing model— including policies on Fair Housing, pets and assistance animals, and the removal of racially restrictive covenants.

She is frequently sourced in U.S. and international media outlets, including The Wall Street Journal, U.S. News & World Report, The Washington Post, and Bankrate, on community association housing topics.

Bauman works directly with CAI's 36 state Legislative Action Committees (LACs) and The College of Community Association Lawyers (CCAL) to further CAI's mission—promoting effective leadership and responsible citizenship in homeowners associations and condominium communities. CAI's LACs and CCAL fellows are considered industry experts and are often leaders in providing model language used in current legislation and regulations throughout the U.S. For the past eight years, Bauman has delivered dozens of education programs and presentations pertaining to legislative and legal trends shaping community associations, Fair Housing, and assistance animals during CAI's annual CEO-MC Retreat hosting 300 of the world's leading community association management chief executive officers.

She is an annual presenter at CAI's Annual Conference and Exposition: Community NOW, attended by 2,000 homeowner leaders, community managers, and business partners where she delivers the latest education, resources, and information about legislative and regulatory topics shaping the community associations housing model.

In 2021, as the executive director of the Foundation for Community Association Research, Bauman led the research committee's mission to better understand diversity and inclusion in today's community associations. Following a survey, The Foundation published the exclusive full report, "Creating Harmony in Diverse Communities," detailing the survey findings and recommendations for CAI to create new education and programming for its membership and the public.

**For media assistance, contact Amy Repke, CAI's vice president, communications and marketing, at [arepke@caionline.org](mailto:arepke@caionline.org) | (703) 624-2179.**



# Community Associations Institute

- Established in 1973 by the Urban Land Institute, National Association of Homebuilders, and the U.S. Department of Housing and Urban Development
- Dedicated to building better communities
- Nonprofit, international, membership organization with 43,000 members and sixty chapters in the U.S. and around the globe. Members include developers, homeowners, community association managers, attorneys, insurance professionals, reserve professionals, bankers, pool supply, landscape, construction, etc.

# Community Associations Institute Florida

## Florida Chapters

### [Central Florida Chapter](#)

Orlando and vicinity

### [Gold Coast Chapter](#)

Central Eastern Florida (Palm Beach, Boca Raton, and vicinity)

### [Northeast Florida Chapter](#)

Jacksonville and vicinity

### [North Gulf Coast Chapter](#)

Pensacola and the Northern Gulf Coast

### [Southeast Florida Chapter](#)

Broward, Dade and Monroe Counties

### [South Gulf Coast Chapter](#)

Ft. Myers, Naples, and vicinity

### [Suncoast Chapter](#)

St. Petersburg and vicinity

### [West Florida Chapter](#)

Sarasota and vicinity

## Statewide Florida Legislative Alliance

## Florida Community Associations

# facts & figures

» Approximately **9,600,000** Floridians live in **3,816,000** homes in **48,500** community associations.

» These residents pay **\$17.3 billion** a year to maintain their communities. These costs would otherwise fall to the local government.



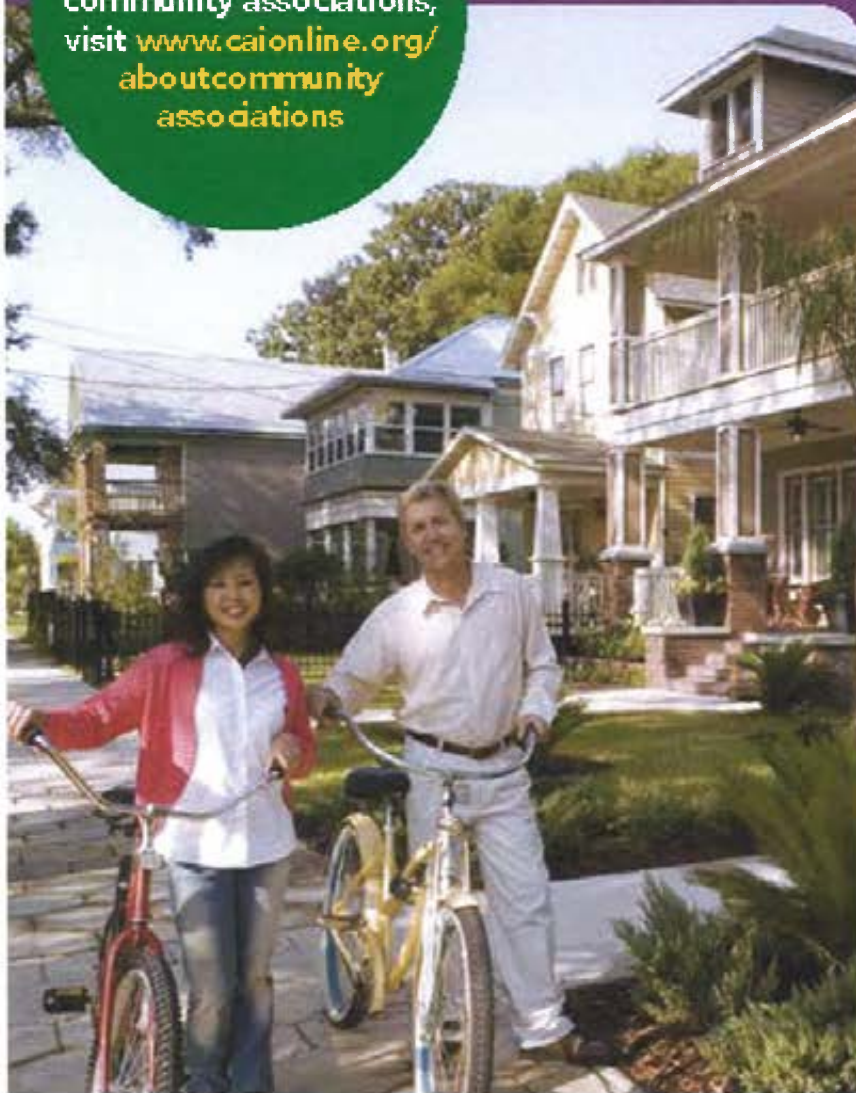
» **323,000** Floridians serve as volunteer leaders in their community associations each year, providing **\$281 million** in service.

» The median home value in Florida is **\$196,800**. Homes in community associations are generally valued at least **4%\*** more than other homes.

» By **2040** the community association housing model is expected to become the most common form of housing.



For more information  
and data about  
community associations,  
visit [www.caionline.org/  
aboutcommunity  
associations](http://www.caionline.org/aboutcommunityassociations)



**87% of Florida homeowners** rate their overall community association living experience as positive (27%) or neutral (60%).

**82%** say that their elected governing board absolutely or for the most part strives to serve the best interest of the community as a whole.

**77%** say they would like to see less government control or no change to community association oversight.

**90%** say their associations rules protect and enhance property values (64%) or make no difference (26%).

Majority of Florida residents say, “safe neighborhood” and “clean/attractive” are best things about living in a community association.

2018 HOMEOWNER SATISFACTION SURVEY RESULTS

## Florida Communities

**59%** say their community manager provides value and support to residents and the community as a whole.

**71%** say that when neighbors neglect to pay their assessments, a community association should insist that every homeowner pay the assessments.

Florida community association members spend an average of **\$101–300 per month** for homeowners association assessments or fees.

**73%** of Florida homeowners living in a community association report voting in national elections and **58%** say they always vote in state and local elections.



# Champlain Tower South Condo Collapse Policy Conversations

## CAI Process

- CAI's Government & Public Affairs Committee held its first discussion at the end of June.
- Three Task Forces with hundreds of people from throughout the U.S. and Canada serving on the task forces
- Research of laws and ordinances in the U.S. and internationally (Australia, Ontario, Singapore, and Spain)
- Conversations with Condo Safety Coalition; including NIST, NLC, NSPE, NACO, Building Inspectors, ICC, NAHC, etc.
- Vetting through 43,000 member; including six hundred legislative committee members
- Next Step: Final approval by CAI's Board of Trustees

# Champlain Tower South Condo Collapse Policy Conversations

## Federal Initiatives

- NIST Funding
- Funding/Financing Issues
- Mortgage Underwriting

## State Initiatives

- Building Inspections
- Reserve Studies and Funding Plans
- Funding/Financing Issues

## 1. Public Policy

## 2. Best Practices

## 3. Education Initiatives

# Champlain Tower South Condo Collapse Policy Conversations

## Federal Initiatives

- NIST Funding
- Funding/Financing Issues
- Mortgage Underwriting



# Champlain Tower South Condo Collapse Policy Conversations

**State Initiatives** currently under discussion. Final recommendation pending.

- Building Inspections
- Reserve Studies and Funding Plans
- Funding/Financing Issues

# Champlain Tower South Condo Collapse Policy Conversations

**Building Inspections**(yet to be determined whether these are policy recommendations or best practices)

- Developer Responsibilities
  - Inspection
  - Maintenance manual
  - Disclosure to purchasers
- Periodic inspections by structural engineer or architect based on ASCE Standard SEI/ASCE 11 99 industry standards (timing TBD) Inspections based on building type (multifamily residential buildings of concrete, load bearing, masonry, steel, or hybrid structural systems such as heavy timber including podium decks
- Communication and disclosure to the owners
- Board authority to special assess without owners vote for life safety maintenance, repairs, and/or replacement

# Champlain Tower South Condo Collapse Policy Conversations

Reserve Studies and Funding Plans (yet to be determined whether these are policy recommendations or best practices)

- National Reserve Study Standards adoption
- Developer reserve plan and funding requirements
- Reserve studies for condominiums, housing coops, and homeowners associations with shared components (cumulative replacement costs exceed \$10,000)
- Funding of reserves based on reserve plan
- Disclosure during resale with certification by those involved in the sale
- Disclosure to owners during budget process
- Disclosure to owners of life safety circumstances
- Authority of board to special assess for life safety required maintenance, repair, and or replacement

# Community Associations Institute

## QUESTIONS

PRELIMINARY CONVERSATIONS NOT  
FINAL RECOMMENDATIONS



# CEOMC presentation to the Florida Bar Task Force

On Condominium Law and Policy on Life Safety (September 1, 2021)

## Debbie Reinhardt

CEOMC

President, Board of Directors

Resource Property Management

Founder and CEO

[DReinhardt@ResourcePropertyMgmt.com](mailto:DReinhardt@ResourcePropertyMgmt.com)

(727) 581-2622

## Mark Anderson

CEOMC

Executive Director

Mark Anderson Governmental Consulting

Founder and CEO

[Mark@ConsultAnderson.com](mailto:Mark@ConsultAnderson.com)

(813) 205-0568



[www.ceomcfl.com](http://www.ceomcfl.com)





**Debra Reinhardt, CEO, CFO**

**CMCA, AMS, PCAM®**

Debra has over thirty years' experience in the Community Association Management industry and co-founded Resource Property Management in 1991. She obtained her Community Association Managers License in 1991. She went on to obtain her Certified Manager of Community Associations Designation (CMCA) in 2002, her Association Management Specialist Designation (AMS) in 2007 and earned the coveted Professional Community Association Manager Designation (PCAM) in 2009. Debra has appeared as an Expert Speaker at Resident Owned Communities (ROC) Educational Seminars speaking on matters of budget and financial reporting. Debra is an active member of both the West Florida Chapter and Suncoast Chapter of CAI, is a founding Board Member of the Fresh Start Mentoring Program for non-violent probationers and has received her Life Coach Certification from Coach Net. Debra is also the current and first woman President of C.E.O.M.C. (Chief Executive Officers of Management Companies), an organization that is committed to promoting and protecting community associations throughout Florida, engaging in advocacy, and setting the standard for community association management.

## CEOMC represents...

- An industry of more than 20,000 licensed community association managers operating pursuant to FL Statute Chapter 468.
- Managers who pay approximately \$3 to \$4 million per year in licensure and renewal fees to the DBPR.
- More than 14k communities in Florida
- A statewide footprint of some 6 million Florida homeowners living in communities managed by CEOMC member companies.

## CEOMC is governed by....

- An elected Board of 7 Members
- 4 Officers
- Executive Director



We are the only voice for Florida's management profession.  
We set the standard for community management.



# By the numbers...

**≈22 million**

Approximately 22 million people live in the State of Florida.

**≈12 million**

Close to 12 million Florida homeowners currently live in a managed community.

**≈6 million**

CEOMC represents approximately half of all managed communities in Florida.

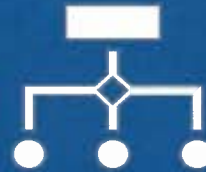
**≈27%**

Over one-fourth of Florida's population is represented through CEOMC.





## What do our member companies\* do?



We are required to operate solely pursuant to, and under the specific direction of, each Association's Board in accordance with the specific management agreement with each Association.



Additionally, we are required to operate within each Association's governing documents, Florida Statutes, the Florida Administrative Code, and all DBPR rulings.

\* While not all Florida community managers and management companies are members of CEOMC, our members represent a statewide coalition of licensed community association management companies and are referred to as "member companies" herein.

# Member company services may include, but are not limited to:

## Financial Management:

- Collect dues and assessments, which fund the common expenses of the Association
- Record keeping, including accounts receivable, accounts payable and financial statements.



## General Property Management:

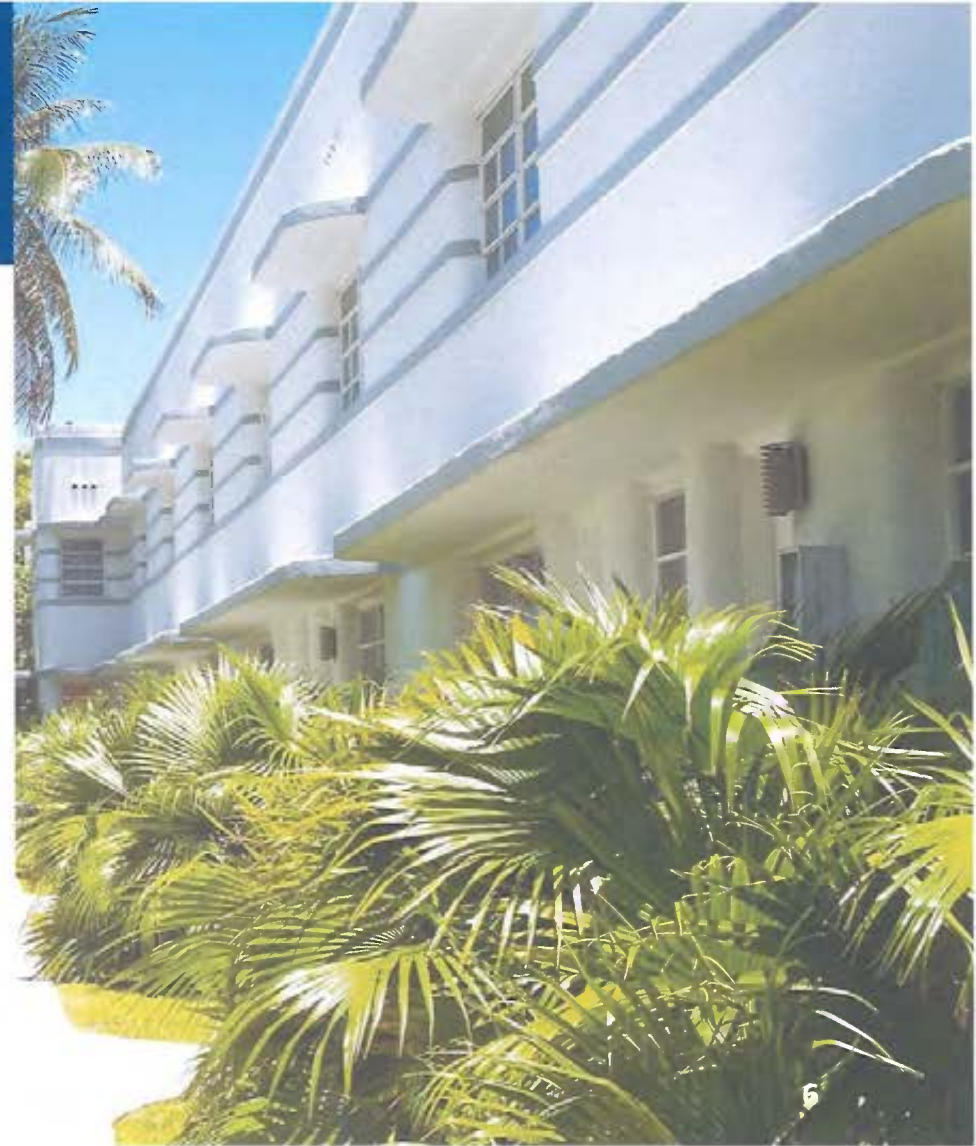
- Coordinate the work of contractors that operate and manage the Association's amenities with day-to-day affairs of the Association
- Facilitate guidance from outside experts to inform and advise the Association's Board on maintenance of various aspects of the property, all as directed by the Board.
- Bring community matters or concerns to the attention of the Board. (See something, say something.)
- Make recommendations to the Board for contracted services, including bids for services.

## Administrative Management

- Enforce all covenants and rules of the Association, as directed by the Association.
- Transparently maintain all records of the Association and make them available upon request pursuant to applicable law.
- Manage Board Meetings (provide proper notice of meetings, enforcement of quorum and protocol).
- Provide communication tools to owners and board members (e.g., written, electronically and via websites / portals).

# Member companies CANNOT and DO NOT:

- Give legal advice.
- Build or design buildings.
- Inspect the structural integrity of buildings.
- Engineer buildings.
- Hire contractors.
- Provide services outside of our contractual obligations.
- Vote as a member of the association.
- Use association funds without Board approval.
- Give advice on building safety, inspection, engineering, insurance, or an Association's legal obligations. That is always the exclusive role of outside experts, as contracted by the Association.



# Recent policy impacting our industry and communities.

In just the last 5 years alone, sweeping new legislative reforms have been enacted into law that are already making Florida's communities more transparent, more accountable and safer. Here are a few of those reforms:

## A 2021 law (SB 630):

- Requires maximum transparency and access to official records by allowing any owner to access any record for any reason or for no reason.
- Expands access to official records by authorizing them to be available on mobile apps.
- Updates emergency powers of Boards to include virtual meetings and public health emergency protocols.

## A 2018 law (HB 841):

- Increased compliance of website requirement through more clearly defined responsibilities for Associations and definitions of official records.
- Clearly directed what records should be posted online.

## A 2017 law (HB 1237):

- Imposed historic, new term Limits for Board Members.
- Enacted new website requirements to ensure transparency of, and access to, official Association records.
- Created new civil and criminal penalties for bad actors.



# Professional Recommendations

## What more can/should be done...

- Consider limitations on the ability to waive reserves entirely. Perhaps a phased-in approach for currently underfunded buildings, taking into account any loans currently in place to fund prior deferred maintenance projects.
- Require periodic reserve studies by licensed individuals. Develop proper licenses and defined standards for these reserve studies.
- Licensed Engineers who perform structural building inspections should make reports available to local building departments. (In the same manner as sprinkler and fire inspectors do currently.)
- Required building recertification, which acts as a “floor” to any local city or county recertification requirements.
- Allow Capital Contribution options on re-sale of units for reserve funding purposes.
- Better lending options from banks and financial institutions when loans are requested for inspections, reserve studies, and building maintenance.



Thank you | Questions | Learn more:





# Life Safety Task Force Insurance Presentation

By David Thompson, CPCU, AAI, API

Andrea Northrop, Esq.

Andrea Northrop, Esq.

[Andrea.Northrop@ioausa.com](mailto:Andrea.Northrop@ioausa.com)





David Thompson, CPCU, AAI, API

DavidThompsonInsurance@gmail.com



# ANDREA C. NORTHROP

Commercial Insurance Advisor

## LICENSURE

- Florida General Lines Insurance Agent 2-20
- Florida Bar
- Missouri Bar
- US District Court for Southern Florida
- Florida DBPR Continuing Education Provider

## AFFILIATIONS & HONORS

- Seacoast Bank Community Board of Directors
- Florida Bar - Vice Chair Real Insurance Committee, 2010-2011
- Florida Bar - Member Real Property, Liability and Surety Committee
- Florida Bar - Member Real Property, Probate, Trust Law Section - Condominium and Planned Unit Development Committee
- Missouri Bar Associations
- US District Court for Southern Florida
- Florida DBPR Continuing Education Provider

## EDUCATION

U. MISSOURI-KANSAS CITY  
SCHOOL OF LAW  
Juris Doctor | 2004

UNIVERSITY OF FLORIDA  
BA Political Science | 2001  
Cum Laude

## PROFILE

Strategic and creative commercial insurance advisor with a strong legal orientation and focused expertise in compliance and risk mitigation.

Core focus on large property risks, complex liability projects and employee benefits.

## EXPERIENCE

VICE PRESIDENT AND PARTNER 2008-Present  
COMMERCIAL INSURANCE CONSULTANT  
Insurance Office of America

- Practice Leader for IOA's West Palm Beach Real Estate division, specializing in large property markets, both domestic and international
- Insurance Risk Management design specialist, solving complex problems and creating tailored solutions
- In-depth analysis of clients' insurance mechanisms, working holistically to manage and mitigate risk

ASSOCIATE ATTORNEY 2004-2007  
Jupiter Law Center

- Estate Planning, Real Estate, Marital, Probate and General Litigation
- Deposition, Mediation and Trial experience
- Draft contracts, petitions, motions and orders
- Successfully conducted litigation in a variety of cases
- Responsible for marketing and networking to expand client base

## **David A. Thompson, CPCU, AAI, API, CRIS**

After receiving his college degree from Mercer University in Macon, Georgia and serving eight years as a commissioned officer in the U.S. Army and U.S. Coast Guard, David began his insurance career in a family-owned independent agency in Vero Beach, Florida where he was a licensed agent selling all types of insurance.

In 1996 David accepted a training & education position with the Florida Association of Insurance Agents in Tallahassee, Florida (FAIA) where he presented continuing education seminars throughout the country on a variety of insurance subjects. He has presented hundreds of seminars dealing with insurance agent Errors and Omission issues and uses a creative approach of involving defense attorneys and plaintiff attorneys on panel discussions. He most enjoys personal lines issues, flood insurance, business auto, and commercial property issues.

In 2020 David retired as a full-time employee of FAIA. He currently does insurance education and consulting for a variety of entities around the country.

In addition to being a full-time insurance nerd, David is an avid runner and biker and smokes the best ribs, chicken, and pork in the country.

David can be reached at:

[DavidThompsonInsurance@gmail.com](mailto:DavidThompsonInsurance@gmail.com)

# Current Market Conditions

1. Uncertainty is the top feedback from all our carriers
2. Almost all Non-Admitted/Excess & Surplus carriers in the space
3. Proof of 40 year re-certification as part of underwriting submissions now for Broward & Miami-Dade condominiums
  - A. Copies of inspections/reports
  - B. Evidence of documented repairs
  - C. 12 months of board meeting minutes
4. Fewer carriers writing older buildings, even excluding wind within 2-5 miles of the beach
5. Capacity is limited
6. Terms issued are more restrictive, less coverage and higher premiums

# “Adequate Property Insurance”

## FS 718.111(11)

- (a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be **based on the replacement cost** of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.
- (d) An association controlled by unit owners operating as a residential condominium shall **use its best efforts to obtain and maintain adequate property insurance** to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection.

# “Adequate Property Insurance”

Without a requirement for insurance coverage to be 100% full replacement cost, “adequate” is subjective.

But it is important to remember that appraisals are to the current building condition, at that time (existing materials and grandfathered building status).

A current appraisal is not “Guaranteed Replacement Cost” or “Ordinance or Law”

## Ordinance or Law Coverage

**Not** included in the standard commercial property policy

Coverage A – Undamaged Portion of the Building

Coverage B – Demolition Cost (Of the undamaged portion)

Coverage C – Increased Cost of Construction

# Ordinance or Law Coverage

## What's available in the marketplace

Coverage A – Usually Full A, so the scheduled replacement cost value of the building

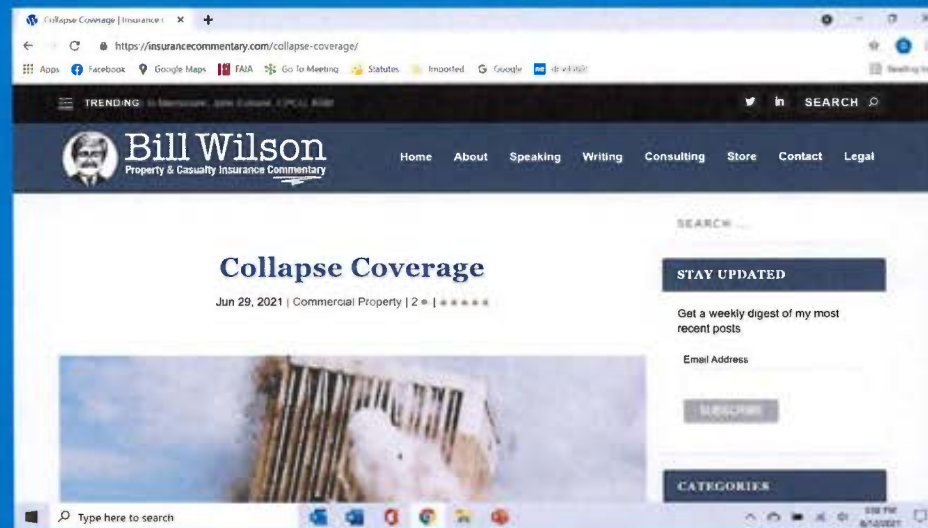
Coverage B – normally a small percentage of the building's value (either 2.5%, 5% or perhaps 10%) but often a sublimit of the Building's Total Replacement Limit

Coverage C – normally a small percentage of the building's value (either 2.5%, 5% or perhaps 10%) but often a sublimit of the Building's Total Replacement Limit



# Collapse

[www.insurancecommentary.com](http://www.insurancecommentary.com)



# Collapse

First of all, the CP 10 30 form **EXCLUDES** collapse of property or any part of the property, including:

- (1) An abrupt falling down or caving in;

# Collapse

## The Give Back

- a.** Building decay that is hidden from view, unless the presence of such decay is *known* to an insured prior to collapse;
- b.** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation;
- d.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs *after* the course of the construction, remodeling or renovation, but only if the collapse is caused in part by...a cause of loss listed in **a.** or **b.**, a “specified causes of loss,” breakage of building glass, weight of people or personal property, or weight of rain that collects on a roof.

# Collapse

- 1. Very narrow application of coverage in Florida**
- 2. The ultimate cause of loss is an important determination for a true covered cause of loss analysis**

## Debris Removal

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply

## Debris Removal

**CAUTION**

If there is a total loss, only \$25,000 is available

# Debris Removal

[www.wired.com](http://www.wired.com)

**NEW YORK** -- Cleaning up the estimated 1.2 million tons of rubble left by the destruction of the World Trade Center could take up to a year and cost \$7 billion, officials said Friday.

# Debris Removal

The image shows a screenshot of a PDF document titled "DEBRIS REMOVAL ADDITIONAL INSURANCE". The document is displayed in a browser window with the file path "C:/Users/david/OneDrive/Desktop/ISO%20pdf%20CP%2004%2015%2010%2000.pdf". The document content includes:

POLICY NUMBER: [REDACTED] COMMERCIAL PROPERTY CP 04 15 10 00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DEBRIS REMOVAL ADDITIONAL INSURANCE**

This endorsement modifies insurance provided under the following:

- BUILDERS' RISK COVERAGE FORM
- BUILDING AND PERSONAL PROPERTY COVERAGE FORM
- CONDOMINIUM ASSOCIATION COVERAGE FORM
- CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
- STANDARD PROPERTY POLICY
- TOBACCO SALES WAREHOUSES COVERAGE FORM

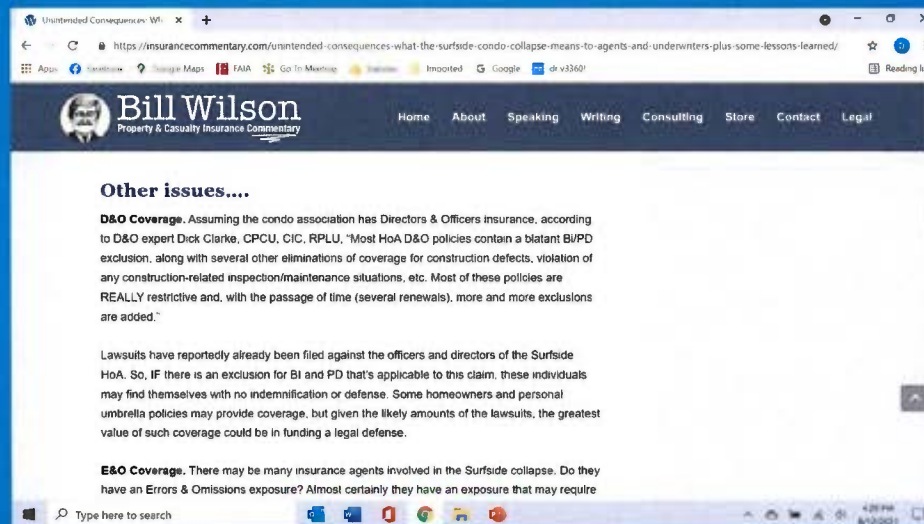
**SCHEDULE\***

Prem. No.	Bldg. No.	Debris Removal Amount	Additional Premium

The screenshot also shows the Windows taskbar at the bottom with the search bar and system tray icons, including the date and time "4:15 PM 8/12/2021".



# Directors & Officers Coverage



The screenshot shows a web browser window displaying an article from the website "Bill Wilson Property & Casualty Insurance Commentary". The browser's address bar shows the URL: "https://insurancecommentary.com/unintended-consequences-what-the-surfside-condo-collapse-means-to-agents-and-underwriters-plus-some-lessons-learned/". The page title is "Unintended Consequences: What the Surfside Condo Collapse Means to Agents and Underwriters Plus Some Lessons Learned". The article is titled "Other issues...." and discusses D&O Coverage and E&O Coverage in the context of the Surfside condo collapse.

**Other issues....**

**D&O Coverage.** Assuming the condo association has Directors & Officers insurance, according to D&O expert Dick Clarke, CPCU, CIC, RPLU, "Most HoA D&O policies contain a blatant BI/PD exclusion, along with several other eliminations of coverage for construction defects, violation of any construction-related inspection/maintenance situations, etc. Most of these policies are REALLY restrictive and, with the passage of time (several renewals), more and more exclusions are added."

Lawsuits have reportedly already been filed against the officers and directors of the Surfside HoA. So, if there is an exclusion for BI and PD that's applicable to this claim, these individuals may find themselves with no indemnification or defense. Some homeowners and personal umbrella policies may provide coverage, but given the likely amounts of the lawsuits, the greatest value of such coverage could be in funding a legal defense.

**E&O Coverage.** There may be many insurance agents involved in the Surfside collapse. Do they have an Errors & Omissions exposure? Almost certainly they have an exposure that may require

## Directors & Officers Coverage

Even if the legislature were to mandate Directors' and Officers' policies to be in place, and mandatory limits, the policies themselves may be insufficient to provide coverage for such a loss as CTS.

Many include exclusionary language “based upon directly or indirectly, arising out of, or in any way involving any”

Bodily injury, illness, disease, emotional distress, mental anguish or death of any person..., construction defect..., damage to tangible property, loss of use or view or destruction or deterioration of any tangible property.

# Unit Owner Policies

1. This market has been worsening in the last 12 months, even prior to CTS
2. Significant reduction in capacity between carriers and/or underwriting restrictions
3. Older buildings, age of roofs, wiring, plumbing, heating and A/C units
4. Hot water heaters – 10 year age limit for eligibility

## Unit Owner Policies

1. However, without mandating Unit Owner individual HO-6 policies, unit owners are self-insuring the risk of the interiors' replacement cost; loss of use; and loss assessment
2. Liability exposure for unit owners with no insurance
3. Personal experience has shown unit owners without insurance are far more likely to file claims against the association than those with their own insurance policies

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**ROBERTO E. BALBIS MSCE, PE**

**EDUCATION**

Bachelor of Science in Civil Engineering, University of Florida (1969).  
Master of Engineering, University of Florida (1974).  
Numerous short courses and attendance to conferences on technical developments.  
Florida Engineering Society Continuing Education Program.

**PROFESSIONAL HISTORY**

2015-Present: Senior Consultant - Ardaman & Associates, Inc., West Palm Beach, Florida

Principal Engineer in charge of special geotechnical, environmental engineering projects. Threshold Building Inspector.

Principal Engineer in charge of limited projects of varied nature similar to those described below.

1982-2015: Branch Manager/Principal Engineer - Ardaman & Associates, Inc., West Palm Beach, Florida

Established the Ardaman and Associates regional engineering office and construction material/testing laboratory in July 1982. Branch office management responsibilities included determining required scope of project services; internal quality control; office and personnel management; and client development in Southeastern Florida and the Caribbean. In charge of supervision of all engineering work more than 15,000 projects since 1982.

Principal Engineer in charge of planning and supervision of field and laboratory geotechnical exploration programs. Engineer of record for the development of recommendations for site preparation and foundation design for numerous low and high-rise structures, bridges, piers, buried structures, transmission towers, silos, roadways, etc. Engineer of record for the design of seawalls, retaining walls, anchoring systems, excavation bracings, underpinning measures, etc. Specialist in the use of innovative site preparation measures and foundation design for structures including embankments over weak deposits and debris throughout Florida. Engineer in charge of monitoring the installation of pile foundation and conducting pile load tests, monitoring implementation of site improvement techniques such as Dynamic Compaction, Vibrocompaction and Vibroreplacement, Soil Exchange, Jet Grouting, Chemical Grouting, etc.

Engineer in charge of vibration monitoring programs and forensic studies for projects where ground vibrations were produced, including roadway construction; demolition work; pile and sheetpile installation; blasting; implementation of Dynamic Compaction, Vibrocompaction and Vibroreplacement; compaction of building pads; etc.

Special "Threshold Building" Inspector for the construction of various high-rise structures in Palm Beach County. Engineer of Record in charge of the supervision/monitoring of the preparation of foundation soils, and of the installation of foundations for numerous low-rise and high-rise structures.

Senior Project Engineer in charge of laboratory and field testing of building and pavement construction materials, including forensic structural investigations using destructive and non-destructive testing techniques. Responsible for expert research and testimony for litigations involving defective construction materials or techniques. Engineer in charge of investigations on the effect of construction on nearby structures.

Senior Project Engineer in charge of earthen dam projects to hold water or mining wastes. Responsibilities included determining the scope of and the supervision of geohydrological and geotechnical subsurface exploration programs; establishing the properties of optimum borrow materials; selecting and analyzing embankment cross-sections; designing leachate prevention and collection systems; design of spillways; etc. Engineer in charge of inspecting the construction of earthen dams. Engineer in charge of safety inspections of existing dams.

Senior Project Engineer in charge of Environmental Engineering projects. Projects have included: design of earthen dams and ponds to hold contaminated wastes; design of landfill liner and cover systems; foundation studies for waste disposal facilities; landfill closure studies; landfill reuse projects for residential and commercial projects; recycling of

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landfill materials; groundwater quality monitoring programs; geohydrological studies for the large scale land application of municipal wastewaters; field explorations for septic drainfield disposal units; removal and replacement of underground storage tanks; Phase I and II environmental assessments for real estate transactions; groundwater and soil contamination assessment reports; management of contamination remediation measures; etc.

Senior Consultant for investigations regarding construction defects, geotechnical conditions, etc. Services included the presentation of formal expert reports, depositions and testimony as needed.

Neutral Evaluator for assessment of sinkhole damage claims throughout Florida.

1975-1982: Project Engineer - Ardaman & Associates, Inc. Orlando, Florida

Geotechnical and Foundation Engineer of record for numerous structures throughout Florida, the Bahamas, the Caribbean and Saudi Arabia. Responsible for geotechnical and geophysical site investigations for sinkhole development potential, reduction of sinkhole development potential, and correction of sinkhole effects in earthen dams and building structures.

Geotechnical Engineer for numerous earth dams through Florida and Iowa, and in Brazil, Panama, and Mexico. Site investigations and engineering analyses and design of embankment cross-sections. Preparation of specifications for construction of earthen dams or ponds to contain clear or contaminated water, municipal wastes, etc. Hydrological studies of dam watersheds and design of spillways. Development of site-specific measures needed to minimize environment pollution effects for mine waste holding facilities. Study, design, and construction supervision of impervious liner systems for waste ponds. Inspection or construction control of construction of earthen dams or ponds. Inspection of operational dams to ascertain their safety and environmental effects.

Specialized laboratory testing of strength and other properties of construction materials such as epoxy bonding agents, grouts, etc. In-place destructive and non-destructive testing of reinforced concrete members. Specialized laboratory testing of strength, consolidation characteristics, permeability, chemical properties, etc., of soils and rocks. In-situ testing of strength, compressibility and permeability properties of soil and rock formations.

1972-1975: Assistant Project Engineer - Ardaman & Associates, Inc., Orlando, Florida

Responsible for the planning and supervision of field and laboratory investigation of foundation or embankment soils, with experience gained in site investigations using geophysical tools and the Dutch Cone and Piezocone penetration equipment; evaluation of the obtained data with regards to bearing capacity; settlement, slope stability, etc.; formulation of optimum embankment cross sections or foundation schemes in accordance with the site conditions and available soils or materials; inspection of construction of zoned earthen embankments; inspection of site preparation procedures, installation of shallow and deep foundation piles, etc.; preparation of construction plans and specifications, reports of investigations and recommendations, and proposals for review by a Senior Engineer for submission to the client.

1971: Resident Engineer - Rader & Associates, Miami, Florida

Responsible for investigations and emergency repair work for Mingo County Airport in Williamson, West Virginia.

1970: Research Assistant - University of Florida, Gainesville, Florida

1970: Staff Engineer - Wingerter Laboratories, Inc., Miami, Florida

## PROFESSIONAL REGISTRATIONS

Professional Engineer, State of Florida Registration No. 15832  
Professional Engineer, State of Iowa Registration No. 9387 (Inactive)  
Professional Engineer, State of Maine Registration No. 9653 (Inactive)  
Special Inspector (Threshold Buildings), State of Florida Certification No. 0013

## OTHER REGISTRATIONS

Licensed General Contractor, State of Florida (Inactive)  
State of Florida Neutral Evaluator

**PROFESSIONAL AFFILIATIONS:**

Florida Engineering Society  
Cuban-American Association of Civil Engineers  
American Society of Civil Engineers  
National Society of Professional Engineers  
Association of Soil and Foundation Engineers  
Florida Institute of Consulting Engineers

**FOREIGN LANGUAGES:**

Spanish and Portuguese

**PUBLICATIONS AND PRESENTATIONS**

Moore, Peter J. and Balbis, Roberto E. "Head Losses in Packer Tests", Journal of Geotechnical Engineering Division, ASCE, Vol. 105, No. GT9, Technical Note, September 1979, pp. 1108-1112.

"Non-standard Uses and Application of the Dynamic Precompression Technique", 1984 Annual Meeting, Engineering Laboratory Forum, Orlando, Florida.

"Techniques for the Improvement of Loose Sands to Support High-rise and Low-rise Buildings on Shallow Foundations in Palm Beach County", Meeting of Palm Beach County Building Officials, Jan. 1985.

Balbis, R.E. and Leon, F.J. "Applying Dynamic Precompression Treatment in Built-up or Downtown Areas in South Florida". 1985 Ohio River Valley Soils Seminar on Applied Soil Dynamics. University of Kentucky, Lexington, Kentucky. October 1985.

Balbis, R.E. "Dynamic Precompression Treatment on Poor Soils". Third National Geotechnical Seminar. Costa Rican Society of Soil Mechanics and Foundation Engineering. San Jose, Costa Rica. November 1985.

## FLORIDA BAR ADVISORY TASK FORCE QUESTIONS

**Definition of Threshold Building.** A Threshold Building is one that has more than three floor levels or more than 50 feet in height, or a building that has an assembly occupancy area in excess of 5,000 square feet and an occupant content greater than 500 persons.

**Proximity to water and corrosion.** I am not aware of objective standards with regards to proximity to water bodies. Nevertheless, proximity to salt water bodies is a standard concern. At this time, it should be recognized that reinforcement in exposed areas such as balconies should be galvanized, should have a minimum concrete cover of two inches and should be designed in the case of balconies so that the slab does not bend and crack along the wall joint which would provide an avenue for corrosive water to be in contact with the reinforcing steel.

In the case of foundations (footings or pile caps), a concrete cover is easily provided to the reinforcing steel. In the case of augered, cast in place concrete piles the reinforcing is usually centered in a 14-inch plus diameter pile, so that there is ample concrete cover for the steel in a brackish water environment.

Seawalls are subject to deterioration regardless of type (cantilevered, with batter piles or with anchor blocks). Buildings and swimming pools should not be so close to seawalls that makes it difficult if not impossible to replace the seawall.

**Difference in type of water bodies near the building.** It appears that corrosion is generally limited to areas near the Ocean. It would be prudent to provide extra protection in areas next to the Ocean and on both sides of the Lake Worth lagoon since they are reached by sea breezes.

### **Post Construction Environmental Factors.**

A.- **Sea level rise.** Frankly, there are unknowns with regards to the true sea level rise over the last century and more important, the rise to be expected over the next fifty years (man-made or sun-made). The projected rise over the next 20 years (NOAA) is 2 to 3 inches which is not significant. The projected rise to 2100 is one foot, assuming there is no change in the rate of sea level rise. I am sure most seawalls in P B County can prevent waves from overtopping them. Note that Flagler Drive in West Palm Beach was built too low and the City's storm sewer lines draining into Lake Worth lagoon will back up and flood Flagler Drive in response to very high tide levels as it has been common for a long time. A sea level rise of a few inches to a foot should not affect buildings.

B.- **Plate shifts.** I presume this refers to tectonic plates. Florida enjoys a great geological stability thanks to the thousands of feet of sedimentary deposits that form it. No significant earthquakes are anticipated.

Sinkholes, which are the result of the dropping of overburden soils into cavities in underlying limestone are not likely, if ever, to develop along the coast because of the lack of cavities in the coastal rock formations and the short height of the groundwater above sea level with minimal soil raveling potential. There is an exception in Delray Beach where a coquina formation along the A1A Highway alignment was exposed and eroded in prehistoric times, creating a buried arch that supports the road. Sinkholes are not likely if ever to develop in Palm Beach County.

C.- **Erosion.** Beach erosion is a recurrent problem which is mitigated by restoring beaches by dredging. The U.S. Corps of Engineers is in charge of that costly task. Buildings near the ocean are protected by seawalls. They are also supported on deep piles that would still support the



buildings even if sand is eroded from under the buildings. There is a Coastal Construction Line (FDEP) is set so that buildings east of that line have to be supported on piles regardless of the presence of a seawall.

D.- Accretion. Accretion would always be welcome.

**Action in nearby properties**

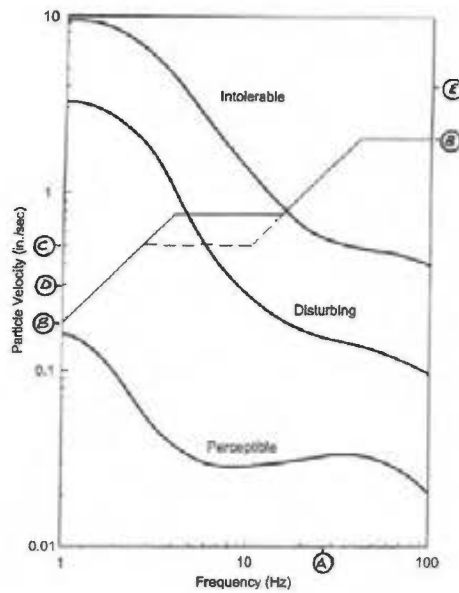
A.- Vibrations. Ground vibrations are produced when:

a.- the ground in adjacent property is vibrated with a vibratory roller or tamper to compact a building site or pavement area.

b.- deep sands in adjacent property are treated with the Vibrocompaction or Dynamic Compaction method to improve their bearing capacity.

c.- sheetpiles are installed in adjacent property to build a basement level or to install deep pile caps, footings or pipelines.

d.- rock is blasted to allow its mining or to remove an excavation obstacle.



Safe Continuous Vibration Limits (U. S. Bureau of Mines RI 8507) and Human Perception (Rathbone, T. C. "Human Sensitivity to Product Vibration" 1963)

- A = Typical frequency for vibratory hammers and rollers
- B = Structural Damage Threshold - Sensitive materials
- C = Typical FDOT guideline
- D = Typical City of WPB guideline (sporadic conditions)
- E = Typical Damage Threshold - Structural Members

**OFFSITE VIBRATIONS GUIDELINES**

The US Bureau of Mines conducted seminal studies that determined that ground Peak Particle Velocities (PPV) developed during the vibration phenomenon was the best indicator of the potential for damage effects. Thus, it was recognized that peak particle velocities greater than 1.0 inches per second were needed to damage plaster, the weakest structural component. Peak particle velocities in excess of 5 inches per second are required to damage concrete. This was confirmed when measuring the effects of earthquakes. Fragile, old stucco/plaster can suffer cracking at 0.7 inches per second. The Florida DOT adopted a conservative threshold level of 0.5 inches per second in offsite structures when building their roadways and bridges. It is apparent that municipalities later adopted a threshold level of 0.2 inches per second to minimize the number of complaints produced by citizens near the blast or compaction effort. This is the level of vibration produced by a 150-pound individual jumping 12 inches above a floor.

In short, offsite vibrations are controlled by regulations imposed by local building departments. The allowed level of offsite vibrations is not sufficient to damage any structure. Vibration monitoring devices are used to measure and control ground vibrations.

**B.- Excavation.** Excavation of a site can produce a slope stability failure that could undermine the foundations of a nearby building. As discussed before, if a sheetpile wall is installed to protect the sides of the excavation, vibrations produced during its installation could densify sands under an adjacent building and cause adverse settlement effects.

If an excavation reaches below the groundwater table it will have to be dewatered to install a basement, a foundation or a pipeline. If the dewatering effort is long or intensive enough it will cause the lowering of the groundwater around the excavation. This will increase the overburden stresses on soils around the excavation and induce their compression, particularly if they are very weak such as organic soils found in parts of Palm Beach and elsewhere.

**Coastal Construction.** The main geotechnical concern for coastal construction in Palm Beach County is that of erosion of sand deposits above the underlying limestone. Buildings are consequently supported on pile foundations embedded into the rock even if the property is protected with a seawall. There is a Coastal Construction line that defines the area where buildings need such protection. The tension or uplift reinforcement inside the piles normally has more than three inches of concrete cover.

Note that the possibility of the presence of underground caves and the development of sinkholes is a consideration when performing subsurface investigations in certain parts of Florida.

**Maintenance Protocol.** There is no official maintenance protocol for private residences. There is a periodic inspection requirement for railings in hotel buildings.

There should be an inspection requirement for railings in balconies of all buildings near the Ocean. Theoretically there is a maintenance supervisor in condominium high rises that checks on the condition of balconies and moisture intrusion effects. Spalling of concrete, cracking of surfaces, rust stains, looseness of railings and pickets, mildew signs, water intrusion, ponding of water, etc. are signs of deterioration or penetration of the building envelope, structural distress or equipment malfunction or insufficiency.

**Existing Florida Building Code.** The Florida Building Code asks for a "Design Professional" to conduct a subsurface investigation for significant structures which is proper. The Code covers wind and earthquake loadings, different types of soils, different types of foundations and different

types of site preparation. These edicts, pronouncements or laws should help the Design Professional keep solutions within reasonable boundaries.

**State-wide Recertification Standard.** I don't see why there should be "local" recertification protocols. Design and construction errors as well as natural deterioration occur everywhere. Moisture intrusion and pipe leaks occur everywhere. The recertification protocol can be made strict with regards to corrosion regardless of distance to the Gulf or the Ocean. A problem is determining which buildings to inspect: height of building, nature of occupancy, private ownership are some of the factors to take into account. The "official" reinspection should start 10 years after the Certificate of Occupancy is issued but signs of structural problems, settlements and moisture intrusion may appear within the first year.

I do not see a difference between a high rise condominium and a high rise hotel with regards to the purposes of this conversation.

**Periodic Structural Inspections.** It may be feasible to have tenants self-inspect for signs of cracks and moisture intrusion on a yearly basis and submit such report to a State Agency together with a description of action taken. However, tenants may find too many cosmetic defects and too few real defects. An outsider inspection may be more practical but there would have to be access to all units. I would think that a five-year inspection cycle by an outside "expert" would suffice.

**Certification of Structural Engineers.** Structural Engineers should be certified as Structural Engineers and not just as Civil Engineers.

**Certificate Collection.** The Certificate should be collected by the local Building Official who should have a list of all buildings requiring certification. Tenants should be made aware via advertisements of the need to inspect the buildings.

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**Question.-** Who is the individual that will do the actual building certification inspection? It appears that there will be hundreds of buildings that will need inspection and the number of Structural Engineers or Threshold Inspectors is limited. Are they going to hire inspectors that have no professional license to do that work? Is there a certification for "Special Inspector" based on the individual's construction experience?

**Roberto Balbis P.E.**

**August, 2021**



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**Florida Bar Condominium Law & Policy Life Safety Advisory Task Force**

Wednesday, September 8, 2021

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- 1. Inspections**
- 2. Reserve Study**
- 3. Reserves**
- 4. Uniform Budget**
- 5. Insurance**
- 6. Fire Safety**
- 7. Frequently Asked Q&A Sheet**
- 8. Governing Documents, Q&A Sheet, Financials**
- 9. Hallandale Condo/HOA Registration Ordinance - [2020-013](#)**

# **Danielle Blake**

Chief of Public Policy

MIAMI Association of REALTORS®

Danielle joined MIAMI REALTORS® 16 years ago to spearhead advocacy initiatives and shape public policy. Since the Surfside tragedy, Miami-Dade Mayor Daniella Levine Cava and the Board of County Commissioners asked her to provide reports on condominium transparency and post-disaster market updates.

Her prior roles with the county include Vice Chair of Education for Mayor Carlos Alvarez's Mortgage Fraud Task Force, Member of the Affordable Housing Advisory Board and Infill Housing Developer with Public Housing and Community Development.

Danielle attended Florida State University, receiving a Bachelor of Arts in Classical Archaeology. Upon graduating, she began lobbying with Robert M. Levy & Associates. Later, she worked in the International Affairs office under the Secretary of the State and served as a legislative assistant in the Florida Senate and House of Representatives.

## **APPENDIX E**

### **Web Portal Comments**

Commenter Name	Comment/Suggestion	Commenter County	Commenter City
Christina Schwinn	Chapter 718 should be amended to remove the ability for members to waive reserves. Personally, I learned this fact the hard way. I bought a condominium unit on Lido Key in SRQ in 1997. I was naïve at the time about condo living and reserves. The condo is on Lido Beach. There were no reserves. I learned shortly after purchasing the unit that there were major rebar and concrete problems. Eventually, the board realized that major work had to be done, i.e. tearing out all of the lanais and walkways, etc. to replace concrete and rebar. The building was originally constructed in 1971. The special assessments ended being about \$40,000 per unit in a 42 unit condominium 20 years ago. I also learned that prior boards were only interested in keeping assessments low and cut every corner possible, including using non commercial grade water sealants on the open-air walk ways.	Lee County	North Fort Myers
Sue Robin	All too often, I encounter boards that recommend to members to waive or only partially fund reserves. A practice that I recommend against. Include in form of association estoppel required by statute, an item which says: For high-rise buildings within ___ miles of the ocean, date of most recent engineering structural report and person to contact to obtain copy.	Miami-Dade County	Miami & Miami Beach & Ft. Lauderdale
Barbara Billiot Stage	There never seems to be enough reserves to keep up with the major repairs and replacements. Owners want to keep assessments low and gamble they will not be an owner when it time to pay for those big ticket items. The ability of the owners to vote to waive reserves is an issue. Property managers either encourage the waivers, trying to stay on everyone's good side or they are not educated enough to know when and how critical repairs need to be done. Add to the mix board members who may have taken office and no one told them their association was responsible for the drainage system under roads or other big ticket items. There needs to be legislation that requires the reserve calculation formula for each asset each year with some type of oversight requiring the association to submit their data to an agency to insure they are complying. There needs to be legislation that stops allowing owners to waive reserves. Good discussion today. Thank you to the committee members for taking on this arduous task.	Orange County	Orlando
Chad M. McClenathen	Florida has developed a body of law that lets most of the parties potentially responsible for a disaster like Surfside off the hook.  1. A statute of repose of 10 years, that incredibly was recently almost shortened to 7 years. The developer, contractors, architect, engineer, all released from liability prematurely. There is no such relief for attorneys and most other professions. What is the public policy here? If this can't be changed, mandate a comprehensive report by 8 years so there is enough time for the association to pursue those responsible. The 718.301 turnover reports are worthless.  2. Triananon [sic], an unfortunate 5-4 decision of the SC should be legislatively overruled. The first line of defense should be thorough inspections by paid public servants who are held accountable for their negligence.  3. An insurance industry that is allowed to exclude collapse claims, mold and mildew claims, and even the duty to defend under E & O policies when claims are based on property loss.  4. Engineers who no longer have individual professional liability. Big claim, no problem, just form another LLC.  5. The Division of Condos which developed a policy of mandating reserves only for the 3 items enumerated in the statute and a few other favorites. Never made sense that the really big ticket items, like replacing cast iron waste lines, copper water pipes, barely adequate electrical service, and structural issues could be ignored with impunity.  6. And finally, the unit owners. Someone said it today, no fiduciary duty. They can and do vote like idiots with no accountability yet still retain the right to hire the PI attorney and sue everyone for their problems. (If you vote no on the funding of reserves, or the levy of the special assessment, perhaps a statutory waiver of the right to complain and sue of the result?) Business judgment rule/principle should be legislatively extended to authorize a board to levy special assessments, borrow money, use reserves, and perform work deemed necessary by an engineer. No membership approval required and association bound by good faith contracts no matter if board is recalled or new board elected.  7. As to reserves, the obvious solution is to mandate funding, but the real issue is the required categories and the application of those categories to a specific condominium. Perhaps we need to rethink the types of condominiums. A subcategory of the fee simple condominium could be a condominium labeled, marketed, and sold as a 40-year condominium (pick a year). It will be terminated after 40 years. No vote required. No need to reserve for the big ticket items like structural, windows etc. Should last 1. Condominium Boards should be required to hire a Manager and the Manager should have ultimate power in decision making. This has been a long-standing problem as Board members are emotionally invested and tend to let this position cloud their judgement in performing the tasks vital to the health and wellbeing of the Association. In the opposite extreme, Board members can be knowledgeable but in a different area and be overzealous in their decisions. This promotes undue stress and complications within the Association unit Owners when making decisions. A licensed manager has been trained and certified to make unbiased decisions and hired to act on the best interest in the association's welfare, shifting the power to them would clarify the responsibility and the Board would act simply as a deliverance mechanism. Having this system would also reduce the risk of misappropriation of funds by Board members and bonding and insuring the Manager would add confidence to the position.	Sarasota County	Sarasota
Anastasia Kolodzik	2. Mandatory State Statute Reserve Study Requirements. As of today, the State of Florida does not require Reserve Studies to be performed. The Statute states there must be a Reserve Account for Condominiums, but there are no requirements for a reserve study or any specific requirements as to how often. Being on the frontline of this issue and experiencing the repercussions of this Statute, a State mandated Reserve Study for all Associations every 3 years and annual updates would reduce the risk of subpar reserves which ultimately have an adverse effect on the health of the Association. States that require a Reserve Study: California, Hawaii, Nevada, Virginia, and Washington. It has been noted that engineers should conduct reserve studies. I have been doing reserve studies for 5 years and having an engineering firm to conduct a reserve studies will not give the complete report as they are only considering the building structure. If they limit reserve studies to engineers then they will not get a full component schedule. Only the building structure would be addressed. Components like pools, elevator and water treatment plants would be excluded by an engineering company. They don't have the budgeting and financial planning experience to conduct a proper study and to assist the Board or CAM in proper funding requirements.	Volusia County	Port Orange
Anastasia Kolodzik	Buildings should also be required to have structural inspections conducted on a regular basis, perhaps every 5-10 years. These should be conducted by a licensed engineering firm, separate but in conjunction with the reserve study. Engineering firms, for the most part, are not familiar with the requirements of a reserve study. They can make their findings known about the structural nature of the building but putting it into an extended financial plan is different and requires a funding methodology only present in a reserve study report. A typical reserve study covers many items beyond the structural repair of a building, such as: roof coverings, exterior paint, common area tile, elevator maintenance, common area furniture, pools, spas, elevators, and other mechanical equipment not included in an engineering study.	Volusia County	Port Orange
Anastasia Kolodzik	Replacement Cost Valuations (Insurance Appraisals). After the destructive hurricanes of 2004 and 2005, it became obvious that most condominium associations were badly under insured. In 2007, the Florida legislature passed a law mandating that condominium associations have an independent replacement cost conducted at a minimum of every 36 months - FS718.111(11)a. The problem is that there is no way to verify that the associations are in compliance with the Statute. Many condominium associations are badly under insured - some as much as 30% or more. We would suggest that insurance carriers in Florida be required (by risk of fine) to have a current replacement cost valuation submitted to them before they can not only write a policy but even to quote rates.	Volusia County	Port Orange

I'd like to throw in my two cents based on over 40 years of representing Associations, including matters in which many of you were not involved and may not be aware of.

1. Of course, the ability of unit owners to waive the full or even funding of reserves must be eliminated.
2. A reserve study by an engineer should be required 2(?) years after turnover, and then every (5, 10,?) years thereafter.
3. If the reserve study, or the reports from a re-certification required by a local government, call for extensive repairs the cost of which would, in the exercise of the board's business judgment, constitute a hardship for some of the unit owners, then the board is empowered to borrow the cost of the repairs under a 20 or 30 year loan. The cost of the loan would be a common expense. The loan may be secured by an assignment of the association's lien on the individual units for the payment of common expenses. A unit owner would be able to pre-pay his or her common expense share of the principal balance of the loan at any time, thereby releasing the unit from the association's assignment of the assessment for common expenses as to that unit.

Mark B. Schorr, Esq.

Broward County

The above described scenario is what we used in the old days for recreation lease buy-outs. From the unit owners' perspective as long as the monthly loan payments were less than the then-current rent payments, they were happy. At least the loan payments were fixed.

I make this suggestion because by being in the statute, it would alert boards to something I don't think they've been aware of: the ability to borrow the multi-million dollar repair costs without severely impacting their unit owners. It's been over 30 years since the last of the rec lease buyouts I'm aware of, and I'm afraid some institutional knowledge has been lost.

For more background on the specifics of the process, feel free to contact Jeff Streitfeld, 954-303-0535, jstreitfeldlaw@gmail.com, and Ken Direktor, KDirektor@bplegal.com.

Looking back at my last message (and please forgive all the font changes, I don't know where they came from) I realize there's something that I need to add regrading my previous suggestions.

Mark B. Schorr, Esq.

Broward County

While a condo association's power to borrow has been in 718.111 figuratively forever, I can see where the ability to assign the right to collect and lien for unpaid assessments for common expenses may not fly in light of the modern theory of textualism, or, in the words of the Supreme Court in the infamous Tower House case, "expressio unius est exclusio alterius."

So, spelling out in the Act, in 718.11(?), the ability to structure long-term loans in the manner I've outlined, would be necessary.

Surfside could have been avoided if there was a mechanism to ensure adequate reserve funding. As I understand it, both the deterioration in the building and the \$9 million cost of repair was known. However, at that point, the cost to each unit owner became prohibitive.

Had reserve funds been collected over time, and funds were available, pulling the trigger on the repair would have been much easier. A possible mechanism to ensure reserve funds are collected could be a reserve true-up on the sale or transfer of a unit. If a reserve analysis has been performed to determine adequate reserve amounts, then each unit's annual reserve contribution is capable of being determined. Reserves no longer should be waived, but collection can be "suspended" for only limited reasons which the statute must identify. If reserves are suspended during a persons period of ownership, then there must be true-up on the sale or transfer of the unit in the amount of the suspended reserves attributable to the unit plus statutory interest. There certainly are other considerations that would have to addressed, such as the effect on mortgagees, etc., but these should not be insurmountable.

David Felice

Hillsborough County

Tampa

If it is felt that this idea is worthwhile, I would be happy to participate in developing it further.

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**THE FLORIDA BAR CONDOMINIUM &  
PLANNED DEVELOPMENT COMMITTEE  
THURSDAY, JULY 22, 2021, 12:30 P.M. TO 1:45 P.M.  
THE BREAKERS, PALM BEACH,  
AND VIA ZOOM**

**MEMBER/ATTENDEE COMMENTS AND SUGGESTIONS FOR  
CONDOMINIUM LAW & POLICY LIFE SAFETY ADVISORY TASK FORCE**

- Limit board discretion for maintenance and repairs of safety/health/welfare items; limit business judgment.
- Eliminate prohibition on subrogation by unit owner insurer against association; associations should be liable for negligence.
- Amend termination statute to provide for different options.
- Duty to disclose by seller (Johnson v. Davis) must be kept in mind; association should be able to assist.
- Reconsider sovereign immunity for building officials.
- Reconsider authorized limitations of liability for design professionals.
- Engineering reports should be more uniform for associations and have standards scope.
- Address adjacent construction effect on existing buildings (piling driving).
- Consider if there is an end of life for buildings in general.
- Consider issues that may affect financing for unit owners and developers, including additional potential building inspection requirements in connection with financing.
- Amend statutes to specifically authorize borrowing and pledging assessments as collateral and provide that it shall not require owner approval.
- Consider whether geographic location should affect building inspection requirements.
- Reconsider statute of repose; warranties.
- Consider less onerous termination options.

- Consider amendments to statute to address Kaufman conundrums.
- Consider reserve studies every 5 years by architect or engineer.
- Consider eliminating waiver of reserves.
- Require reserves for buildings of certain sizes.
- Require more than one-year terms of directors.
- Require directors to become certified through education.
- Do not allow developers to waive or reduce reserves.