



**THE FLORIDA SENATE**  
**SENATOR KATHLEEN PASSIDOMO**  
*President*

## MEMORANDUM

**TO:** All Senators  
**FROM:** Kathleen Passidomo  
**SUBJECT:** Condominium Safety and Affordability  
**DATE:** August 16, 2024

---

I appreciate the conversations with several Senators, and many of my own constituents in Southwest Florida, over the last several weeks regarding what I believe is a shared goal of ensuring safety while preserving affordability within condominium communities across our state.

I am increasingly concerned by what I see as a growing narrative, ripe with misconceptions and inaccuracies, regarding the condo safety legislation passed in the years following the devastating collapse of the Champlain Towers in Surfside. Some have suggested a special session be called to address or alter existing safety and reserve funding requirements and other related issues. I do not agree, and for the reasons outlined in detail below, I have no intention at the present time of utilizing my authority as Senate President to convene a special session.

In my view, no law is perfect. Sometimes issues arise during implementation, and there is often room for improvement. However, the legislative process best serves Floridians when there is analysis, collaboration, and input from all stakeholders. I believe the upcoming committee weeks and regular session following our post-election reorganization provide the best opportunity for this type of dialogue. As a returning Senator, I look forward to being a part of the solution.

Let me assure you, I hear the anger and frustration of condo owners who feel they have been misled and their resources mismanaged. There is no question some condo boards have had their share of bad actors who have not abided by their fiduciary responsibility to their fellow residents, who flout transparency requirements, or who perhaps just do not understand the significance of their role. I appreciate the financial constraints of seniors, young families, and other Floridians who do not have the income or assets to afford increased dues and assessments. Having lived in my home for more than 35 years before it was flooded by Hurricane Ian, I empathize with those Floridians, particularly our seniors, who are faced with the sad prospect of having to leave the property where they had planned to live out their days.

August 16, 2024

Page 2

These are difficult situations, and while there are no easy answers, it is important to be clear about the problem we are trying to solve. The problem is some condominiums in our state were not maintained over the years and are now unsafe. We lost 98 of our fellow Floridians at Surfside – a tragedy that was entirely preventable. A Florida dream turned into a Florida nightmare.

When I moved to Florida for law school fifty years ago, our state was in the midst of the condominium craze. Condos provided a sought-after lifestyle, particularly for snowbirds and other seniors accustomed to the security and other financial benefits of homeownership, but seeking additional amenities and a built-in sense of community. Condo life was prevalent in advertising, media and television shows at the time, and became somewhat synonymous with life as a Floridian in a coastal community. My own parents were a clear example of one of the demographic groups who sought out this lifestyle, leaving the cold winters of New Jersey and retiring to a condominium in Naples. Today, condos are not just second homes or retirement destinations, and they are popular far beyond our beachfront communities. Floridians and their families of all ages and sizes are drawn to the convenience and community condominiums can offer. Senator Burton, Senator Hooper, and I all live in the same condo complex when we are in Tallahassee. It's a great lifestyle.

The problem is, as with all lifestyles, condominium living comes at a price. Costs associated with ongoing maintenance and repairs are supposed to be shared among owners, in addition to setting aside significant savings for long-term structural needs over time. As we learned following the tragedy in Surfside, all too often while funds for ongoing maintenance, repairs, or cosmetic issues were collected and spent, larger reserve accounts intended to cover more significant structural maintenance were waived. Fast forward 40, 50 or 60 years, and too many of our condo buildings are in need of critical life and safety upgrades and associations have inadequate reserve funds to cover those costs. Meanwhile, some condo owners are living on fixed incomes, family budgets are already stretched thin by inflation, and the prospect of increased dues or monthly loan payments to cover large assessments seems untenable.

As a conservative who has practiced real estate law for more than 45 years, you will not find a bigger proponent of private property rights. However, in this instance both government and the private sector have had to respond in order to ensure appropriate safety standards and a healthy market for Floridians who want to buy or sell a condominium. Recently, many banks have decided not to issue loans, and many insurance companies will not offer coverage to condos in associations that do not maintain adequate reserves or have structural deficiencies. Clear inspection and reserve guidelines protect both the personal safety and the financial investment of Floridians who call a condominium home. We also listened to constituent concerns about condo association mismanagement and passed a sweeping new law to increase oversight of condominium boards, including requirements for transparency, conflict of interest disclosure, and criminal penalties for violations.

Those guidelines, additional resources, and answers to other frequently asked questions are available below. I hope you find this information helpful, and again, I look forward to working with you under the leadership of President-Designate Albritton when we return for the next legislative term.

### **Current Requirements for Milestone Safety Inspections**

- Condominium and cooperative association buildings three or more stories in height must have a “milestone inspection” of the buildings’ structural integrity by an architect or engineer when a building reaches:
  - 30 years of age and every 10 years thereafter, or
  - 25 years of age and every 10 years thereafter if the building is located within three miles of a coastline.
- If a building reached 30 years of age before July 1, 2022, the building’s initial milestone inspection must be performed before December 31, 2024.
- A phase one milestone inspection must commence within 180 days if an association receives a written notice from the local enforcement agency.
- A phase two milestone inspection if there is evidence of “**substantial structural deterioration**” as determined by a phase one inspection.
- Inspection report results must be provided to local building officials and associations, and the inspector-prepared summary must be provided to unit owners.
- Unit owners have the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety. Renters have the right to inspect the milestone inspection reports.

### **Current Requirements for Reserve Funding for the Continued Maintenance and Repair of Condominium and Cooperative Buildings:**

- A “structural integrity reserve study” is the study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Condominium and cooperative associations must complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.
- Associations existing on or before July 1, 2022, controlled by non-developer unit owners must have a structural integrity reserve study completed by December 31, 2024.
- It is a breach of a board member or officer’s fiduciary duty if an association fails to complete a structural integrity reserve study.

### **Frequently Asked Questions on Reserves**

**Q: Must an association's reserve account have accumulated all of the funds necessary to account for the remaining useful life for each reserve component by 2025?**

A: By requiring independent reserve studies, this law ensures each condominium is properly prepared to keep its occupants safe. In order to ensure flexibility for condominium associations, unless there is an immediate safety problem, the law does not require reserves to be fully funded at the completion of the reserve study.

The amount that needs to be reserved is calculated based on the estimated remaining useful life and estimated replacement cost of the item.

For example: If the cost required to replace the roof in 10 years is \$100,000, the association is not required to have \$100,000 immediately reserved for repairs. Instead, the association must reserve sufficient funds each year to have the required funding available at the time of anticipated repairs. The required reserve studies help Floridians living in a condominium to be aware of the condition of their building and provide a clear guideline for budgeting to ensure repairs can be completed when necessary.

**Q: What reserves can a condominium or cooperative association waive?**

A: For budgets adopted on or after December 31, 2024, a majority of the association's total voting interests is required to waive the collection of reserves. However, associations that are subject to the structural integrity reserve study requirements (Condos with a building that is 3 or more stories in height) may not waive the collection of reserves for certain structural items or use reserves for other purposes.

**Q: What if, after an inspection from a licensed engineer or architect, there is no problem noted with regard to a particular component? Will that component still need to be reserved for?**

A: No, the Department of Business and Professional Regulation (DBPR) will rely on the structural integrity reserve study to determine the items for which there needs to be a reserve.

Moreover, with respect to items for which an estimate of useful life is not readily ascertainable or that have an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs, but an association must reserve the amount of deferred maintenance expense, if any, that is recommended.

**Q: May a reserve schedule account for inflation?**

A: Yes.

### **House Bill 1021, Community Associations (2024)**

A full summary of the recently passed law relating to condominiums, HB 1021, is available at: <https://www.flsenate.gov/Committees/billsummaries/2024/html/3512>

#### **This legislation enacted the following new criminal penalties related to condominium associations, and the official records of the association:**

- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and repeatedly violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association;
- First degree misdemeanor for knowingly and intentionally defacing or destroying required accounting records, or failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- First degree misdemeanor for engaging in specified fraudulent voting activity, and knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Third degree felony to willfully and knowingly refuse to release or produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape;
- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept a kickback; and

The law provides that officers and directors charged with a criminal violation under ch. 718, F.S., are deemed removed from office and a vacancy declared.

**Residents who believe a crime has been committed related to condominium or cooperative association should contact local law enforcement using a non-emergency line.**

### **Condominium Resources**

The following are links to helpful resources prepared by the Division of Florida Condominiums, Timeshares & Mobile Homes, Florida Department of Business and Professional Regulation (DBPR):

#### **The Education Initiative**

The Education Section of the Division of Condominiums, Timeshares, and Mobile Homes (division) and the Planned Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar, have partnered to present the Florida Condo Education Initiative. It is available at: <https://www.gotostage.com/channel/c8281da84964400fb7d5be1fea083906>

August 16, 2024  
Page 6

### **Information on the Structural Integrity Reserve Study**

A Special Presentation on Structural Integrity Reserve Studies in Condominiums Explained is available at: <https://register.gotowebinar.com/recording/3186890912327468123>

*Note: enter an email address to access the webinar.*

### **Educational Publications provided by the Division**

Information on Meeting Notice Requirements, an Election Checklist, an Election Flow Chart, Proxy Information, a Mediation Information Sheet, and Variances and Waivers is available at: <https://www2.myfloridalicense.com/condominiums-and-cooperatives/condominiums-cooperatives-educational-publications/>

### **Frequently Asked Questions**

Answers to the Frequently Asked Questions (FAQs) for condominiums is available at: <https://www2.myfloridalicense.com/condominiums-and-cooperatives/faqs/#1492784365532-2de8ec51-8297>

### **Senate Bill 154, Condominium and Cooperative Associations (2023)**

Information on the implementation by DPBR of SB 154 is available at: <https://www2.myfloridalicense.com/condominiums-and-cooperatives/jurisdictional-sb154-information/>

### **Condominium Ombudsman**

Information on the Condominium Ombudsman's Office, including the appointment of an Election Monitor and a Request for Access to Association Records, is available at: <https://www2.myfloridalicense.com/condominiums-and-cooperatives/condominium-ombudsman/#1511293779929-0f0323ae-621b>

DBPR is in the process of appointing a new Senior Ombudsman to oversee these services.

### **Condominium Complaints**

Forms for Condominiums Complaints are available at: <https://www2.myfloridalicense.com/lsc/documents/cccomplaint.pdf>

### **Forms and Publications**

Other Condominium Forms are available at: <https://www2.myfloridalicense.com/condominiums-and-cooperatives/ctmh-forms-and-publications/#1588260204038-7d6e4c07-95a5>