

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7069 PCB PPE 22-03 Condominium and Cooperative Associations
SPONSOR(S): Appropriations Committee, Pandemics & Public Emergencies Committee, Perez & others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Pandemics & Public Emergencies Committee	17 Y, 0 N	Brackett	Williamson
1) Appropriations Committee	23 Y, 0 N, As CS	Helping	Pridgeon

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation (DBPR), broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations.

The Florida Building Codes Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Florida Building Code (Building Code) applies to new construction and must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction by local governments through the issuance of permits and completion of inspections. However, the Building Code does not contain requirements for the maintenance and inspection of existing buildings.

The bill:

- Creates a statewide building recertification requirement for condominiums and cooperative buildings that are three stories or higher in height 30 years after initial occupancy and 25 years after initial occupancy for buildings located within three miles of the coast.
- Requires recertifications every 10 years after a building's initial recertification.
- Requires an additional, more intensive inspection, or a "phase 2 inspection," if a building recertification reveals substantial structural deterioration.
- Requires building officials to provide written notice to associations when buildings must be recertified.
- Requires recertification and phase 2 reports be submitted to building officials and unit owners.
- Provides local building officials with ability to assess penalties for failing to comply with the requirements for building recertifications and phase 2 inspections.
- Requires condominiums and cooperatives to conduct structural integrity reserve studies every 10 years for buildings that are three stories or higher in height and prohibits waiver of funding for certain reserves.
- Requires developers to complete structural integrity reserve studies for every building that is three stories or higher, prior to turning over an association to the unit owners.
- Repeals the ability of developers to waive the collection of all types of reserve funds.
- Requires structural integrity reserve study inspections, and recertification and phase 2 inspections to be performed by licensed engineers or architects.
- Provides that structural integrity reserve studies, and recertification and phase 2 inspection reports are a part of an association's official records and must be provided to a potential purchaser of a unit.
- Provides that failing to perform a required structural integrity reserves study, recertification, or phase 2 inspection is breach of a board member or officer's fiduciary duty.
- Requires a community association manager to provide a recertification report to a local building official, if the manager receives the report.
- Provides for an additional way for condominium associations to terminate if the cost of repairs identified in a phase 2 inspection are more than 65 percent of the total fair market value of the units in the association.
- Authorizes DBPR to enforce the structural integrity reserve studies and recertification and phase 2 inspection requirements.
- Requires associations to notify DBPR about the number of buildings in their association that are three stories or higher.

The bill provides an appropriation to DBPR to implement the bill. The bill may have an insignificant negative fiscal impact on local governments and a significant impact on the private sector. See Fiscal Analysis and Economic Impact Statement.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h7069a.APC

DATE: 2/17/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (“Division”), within the Department of Business and Professional Regulation (“DBPR”), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, alternative dispute resolution, and developer disclosure. The Division has regulatory authority over:

- Condominium associations.
- Cooperative associations.
- Florida mobile home parks and related associations.
- Vacation units and timeshares.
- Yacht and ship brokers and related business entities.
- Homeowners’ associations (limited to the arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S., the “Condominium Act.” Persons own condominium units along with an undivided right of access to the condominium’s common elements.¹ A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.² All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.³ The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration,” which is responsible for the association’s administration.⁴

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., the “Cooperative Act,” in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.⁵ The lease payment amount is the pro-rata share of the cooperative’s operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are largely identical to those regulating condominiums.

Fiduciary Relationship

Board members and officers of a condominium or cooperative association have a fiduciary relationship with the unit owners in their condominium or cooperative. This fiduciary relationship requires board members and officers to act in good faith and in the best interests of the unit owners. Under the “business judgment rule,” the board must act within the scope of its authority, in a reasonable manner, and must perform its duties with the care and responsibility that an ordinarily prudent person would exercise under similar circumstances.⁶

Board members and officers can be the subject of a cause of action for a breach of their fiduciary duty. However, a person bringing such action must prove that the board member or officer had a fiduciary

¹ S. 718.103(11), F.S.

² S. 718.104(2), F.S.

³ S. 718.103(2), F.S.

⁴ S. 718.103(4), F.S.

⁵ S. 719.103(2) and (26), F.S.

⁶ Ss. 718.111(1) and 719.104(8), F.S.

duty that was breached that caused damages and rose to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.⁷

To determine if a board member or officer breached his or her fiduciary duty, Florida courts look to see if the board member or officer violated the business judgment rule by determining if the association had the contractual or statutory authority to perform the relevant act and if the decision was reasonable. The business judgment rule generally will protect association board members and officers, as long as those board members or officers act within the scope of their authority and in a reasonable manner.⁸

Champlain Towers South

On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium building in the Town of Surfside, which was completed in 1981, partially collapsed resulting in the death of 98 people.

In response, the National Institute of Standards and Technology (NIST) within the United States Department of Commerce launched a full investigation into the cause of the building's failure. According to NIST, it will provide regular updates on the progress of the investigation, but because of the amount of evidence and information that must be examined thoroughly, the investigation could take multiple years to complete.⁹

The Town of Surfside has also hired a forensic investigator to investigate the cause of the collapse, which could take multiple months.¹⁰

Despite the fact that the investigations to determine the cause of the building's failure may take months if not years to complete, the condition of the building prior to collapse and released documentation about the building's history have revealed potential factors that may have caused or contributed to the building's collapse.¹¹

According to news report, in 2018, an engineering firm performed an inspection of the building and issued a report. The report noted that Champlain Towers South's pool deck was flat and not sloped. A sloped deck allows water to drain properly whereas a flat deck can create standing water, which can seep down and damage underlying concrete. The engineer's report also mentioned that the waterproofing below the pool deck was beyond its useful life.¹²

The report noted that the building had major structural damage to a concrete slab below the pool deck and corrosion (spalling and cracking) of the building's columns and beams in the underground garage.¹³

⁷ Harris B. Katz, *Condo column: Can board members be sued and how can an association remove a director?*, TC Palm (Oct. 17, 2019) <https://www.tcpalm.com/story/news/local/florida/2019/10/17/can-condo-board-members-sued-and-how-can-association-remove-director/3907749002/> (last visited Jan. 17, 2022).

⁸ *Id.*; *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).

⁹ National Institute of Standards and Technology, *NIST Establishes Expert Team to Investigate the Champlain Towers South Collapse*, Aug. 25, 2021 <https://www.nist.gov/news-events/news/2021/08/nist-establishes-expert-team-investigate-champlain-towers-south-collapse> (last visited Jan. 6, 2022).

¹⁰ Phil Prazan, *Surfside Hired Him to Investigate Condo Collapse. Here's How He'll Do It.*, 6 South Florida (Jul. 2, 2021) <https://www.nbcmiami.com/news/local/surfside-hired-him-to-investigate-condo-collapse-heres-how-hell-do-it-0/2485052/> (last visited Jan. 6, 2022).

¹¹ The Occupational Safety and Health Administration, the town of Surfside and Miami-Dade County's State Attorney's Office are also investigating the collapse. The Real Property, Probate and Trust Law Section of the Florida Bar created the Condominium Law and Policy on Life Safety Task Force, which provided recommendations to improve building safety on October 12, 2021. In addition, the Miami-Dade police are handling a homicide investigation, and the unit owners have filed a class-action lawsuit against the condo association.

¹² Gina Harkins, *What you need to know about the Florida condo collapse as the search for survivors continues and probe begins*, Washington Post (Jul. 10, 2021), <https://www.washingtonpost.com/nation/2021/06/25/florida-condo-collapse-what-you-should-know/> (last visited Jan. 6, 2022); Visual Journalism Team, *Miami building collapse: What could have caused it?*, BBC (Jul. 1, 2021) <https://www.bbc.com/news/world-us-canada-57651025> (last visited Jan. 6, 2022).

¹³ *Id.*

According to a news reports, the building may have also had design flaws. According to the report, the building plans specified structural columns that were too narrow to accommodate enough rebar, which means the contractors had to choose between cramming extra steel into a too-small column — which can create air pockets that accelerate corrosion — or inadequately attaching floor slabs to their supports. The report also indicated the columns were “barely designed with enough strength to support a pool party, much less the layers of pavers and standing water that loaded it down over the decades.”¹⁴

According to news reports, the association also delayed the repairs of the issues identified in the engineering reports because of infighting among members of the association.¹⁵

Inspection of Existing Buildings

Current Situation

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure Florida’s minimum standards were met. Local governments could choose from four separate model codes. The state’s role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁶

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission’s recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.¹⁷ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.¹⁸

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁹

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International

¹⁴ Alissa Walker, *Collapsed Surfside Towers Actually Broke Building Code From the Very Beginning*, Curbed (Aug. 9, 2021) <https://www.curbed.com/2021/08/miami-condo-collapse-structural-flaws.html> (last visited Jan. 6, 2022); James Glanz, Mike Baker, and Anjali Singhvi, *Condo Wreckage Hints at First Signs of Possible Construction Flaw*, The New York Times (Jul. 3, 2021) <https://www.nytimes.com/2021/07/03/us/florida-condo-collapse-steel-rebar.html> (last visited Jan. 6, 2022).

¹⁵ Russell Lewis, *Months Before Florida Condo Collapsed, Residents And The Board Sparred Over Repairs*, NPR (Jul. 2, 2021) <https://www.npr.org/sections/live-updates-miami-area-condo-collapse/2021/07/02/1012373938/months-before-florida-condo-collapse-residents-and-board-sparred-over-repairs> (last visited Jan. 6, 2022); Beth Reinhard, Tik Root, Brady Dennis, and Jon Swaine, *Majority of Florida condo board quit in 2019 as squabbling residents dragged out plans for repairs*, Washington Post (Jun. 30, 2021) https://www.washingtonpost.com/investigations/majority-of-florida-condo-board-quit-in-2019-as-squabbling-residents-dragged-out-plans-for-repairs/2021/06/30/43592282-d98e-11eb-ae62-2d07d7df83bd_story.html (last visited Jan. 6, 2022).

¹⁶ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 4, 2022).

¹⁷ *Id.*

¹⁸ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Jan. 4, 2022).

¹⁹ See s. 553.72(1), F.S.

Code Council,²⁰ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.²¹

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.²² Every local government must enforce the Building Code and issue building permits.²³

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.²⁴

To obtain a building permit an applicant must complete an application for the proposed work on the form furnished by the government entity.²⁵ A local government that issues building permits must post each type of building permit application on its website.²⁶

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.²⁷ A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.²⁸

Any construction work that requires a building permit also requires building plans and inspections by the building official to ensure the work complies with the Building Code.²⁹ Generally speaking, a permitted project that passes the required inspections is considered completed or closed.³⁰

The Building Code only applies to new construction, and does not apply to existing buildings unless there is new design, construction, erection, alteration, modification, repair, addition, change of occupancy, or demolition of such buildings.³¹

Florida law formally required regular inspections of certain condominium buildings, but the law was repealed shortly after enactment. In 2008, the Legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of useful elements every five years by a licensed engineer or architect. A condominium association could waive the requirement to perform an inspection for five years with a majority vote of interests present at a properly called meeting of the association.³²

²⁰ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 4, 2022).

²¹ Ss. 553.73, and 553.74, F.S.

²² S. 553.72, F.S.

²³ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

²⁴ See ss. 125.56(4)(a) and 553.79(1), F.S.

²⁵ S. 713.135(5) and (6), F.S.

²⁶ Ss. 125.56(4)(b) and 553.79(1), F.S.

²⁷ S. 468.603(2), F.S.; Section 202 of the Seventh edition of the Florida Building Code (Building).

²⁸ S. 468.603(2), F.S.; Section 202 of the Seventh edition of the Florida Building Code (Building).

²⁹ Sections 107, 110.1, and 110.3 of the Seventh edition of the Florida Building Code (Building).

³⁰ Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Jan. 4, 2022).

³¹ S. 553.73(1)(a), F.S.; Section 101 of the Seventh edition of the Florida Building Code (Existing Building).

³² Ch. 08-28, Laws of Fla.

The Legislature repealed the requirement in 2010. According to news reports, the Legislature repealed the inspection requirement because the inspections were too expensive.³³

Age of Condominium Buildings

There are 1,529,764 condominium units in Florida operated by 27,588 associations. Of those units:³⁴

- 105,404 units are 50 years or older.
- 479,435 units are 40-50 years old.
- 327,537 units are 30-40 years old.
- 141,773 units are 20-30 years old.
- 428,657 units are 10-20 years old.
- 46,958 units are 0-10 years old.

Additionally, over 2,000,000 residents are estimated to be occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.³⁵

Local Building Recertification Programs

The Building Code does not contain requirements for the maintenance and inspection of existing buildings.³⁶ However, local governments may enact such requirements at their discretion to apply throughout a local jurisdiction. According to DBPR, some local jurisdictions in the state have used the following model standards to aid in their adoption of local requirements for the maintenance and inspections of existing buildings: the International Property Maintenance Code, the Standard Housing Code, and the Standard Unsafe Building Abatement Code, or some combination thereof.³⁷

Since the 1970s, Miami-Dade County has required certain existing buildings to be recertified.³⁸ Currently, Miami-Dade County requires certain buildings to be recertified that are at least 40 years of age in order to determine the general structural condition of the building and the general condition of its electrical systems. Buildings must be recertified every 10 years after the initial recertification.³⁹

Miami-Dade County requires all buildings, except single-family residences, duplexes, and minor structures⁴⁰ to be recertified when they have been in existence for 40 years or longer, as determined by the building official. When a building official determines a building must be recertified, the building official must provide notice of recertification to the building owner.⁴¹

Within 90 days of receiving the notice, an owner must provide a written report to the building official certifying that such building or structure is structurally and electrically safe, or has been made

³³ Ch. 10-176, Laws of Fla.; Jeffrey Schweers, *'It takes a tragedy': Florida's hands-off approach to condo regulations tested after Surfside*, Tallahassee Democrat (Jul. 2, 2021) <https://www.tallahassee.com/story/news/local/state/2021/07/02/surfside-miami-condo-collapse-florida-aging-condos-not-require-inspections/7811000002/> (last visited Jan. 25, 2022).

³⁴ Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force, p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited Jan. 21, 2022).

³⁵ *Id.*

³⁶ Department of Business and Professional Regulation, Agency Analysis of 2022 Senate Bill 1702, p. 2 (Jan. 7, 2022).

³⁷ *Id.*

³⁸ Broward.org, *Building Safety Program*, <https://www.broward.org/Building/Pages/40-Year-Building-Safety-Inspection-Program.aspx> (last visited Jan. 25, 2022).

³⁹ Section 8-11(f), Miami-Dade County Code. Miami-Dade County Department of Regulatory and Economic Resources, *Notice of Required Recertification of 40 Year Old Building(s)*, <https://www.miamidade.gov/permits/library/recertification-building.pdf> (last visited Jan. 6, 2022).

⁴⁰ Minor structures are buildings that have occupancy loads of 10 or less people and have a gross area of 2,000 square feet or less.

⁴¹ Section. 8-11(f), Miami-Dade County Code.

structurally and electrically safe, for the specified use for continued occupancy. The written report must be prepared by a licensed engineer or architect. An engineer or architect may only undertake assignments if he or she is qualified by training and experience in the specific technical field involved in the inspection and report.⁴²

The written report must bear the impressed seal and signature of the engineer or architect who performed the inspection, indicate the manner and type of inspection forming the basis for the report, and describe any matters identified as requiring remedial action.⁴³

If the recertification inspection finds that repairs or modifications are necessary, the owner must complete the repairs or modifications within 150 days from the date of receiving the notice of recertification from the building official.⁴⁴

Written recertification reports must be in conformity with the minimum inspection procedural guidelines issued by the Board of Rules and Appeals.⁴⁵

Miami-Dade County provides that any building or structure that is subject to recertification, which the owner has not timely responded to the building official's notice of required inspection or has failed to make all of the necessary repairs or modifications resulting from the recertification inspection, will be demolished.⁴⁶

Broward County Recertification

Broward County created its recertification program in 2005, and it has been effective since January 2006. Broward County's recertification is modeled after Miami-Dade County's. However, Broward County exempts all buildings that have a gross area of 3,500 square feet or less. Broward County also gives an owner of a building 180 days to complete repairs identified in a written recertification report, instead of 150 days.⁴⁷

Additional Local Governments

Currently, other local governments in Florida have adopted or are considering adopting building recertification programs similar to Miami-Dade County's and Broward County's recertification program, including Palm Beach County⁴⁸, the city of Boca Raton⁴⁹, and Hillsborough County.⁵⁰

Professional Engineers

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE). DBPR contracts with the Florida Engineers Management Corporation to provide the administrative, investigative, and prosecutorial services for FBPE.⁵¹

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Section 8-5(6), Miami-Dade County Code.

⁴⁷ Broward County Board of Rules & Appeals, *40 Year Building Safety Inspection Program*, (Jun. 2015) <https://www.broward.org/CodeAppeals/Documents/40YBSI-INFO-Rev.6-15.pdf> (last visited Jan. 25, 2022).

⁴⁸ Wayne Washington, *Panelists: HOAs and timely building inspections at the heart of better safety protocols*, The Palm Beach Post (Aug. 18, 2021) <https://www.palmbeachpost.com/story/news/local/westpb/2021/08/18/surfside-condo-collapse-panelists-discuss-ways-make-buildings-safer/8164366002/> (last visited Jan. 21, 2022).

⁴⁹ City of Boca Raton, *Building Recertification Program Ordinance*, <https://www.myboca.us/2058/Building-Recertification-Program-Ordinan> (last visited Jan. 21, 2022).

⁵⁰ C.T. Bowen, *Hillsborough commissioner seeks expedited building inspection rules*, Tampa Bay Times (Oct. 20, 2021) <https://www.tampabay.com/news/hillsborough/2021/10/20/hillsborough-commissioner-seeks-expedited-building-inspection-rules/> (last visited Jan. 21, 2022).

⁵¹ S. 471.038(3), F.S.

Section 471.013, F.S., provides the license qualifications for a professional engineer. In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have graduated from:⁵²

- An approved engineering science curriculum of four years or more in a board-approved school, college, or university; or
- An approved engineering technology curriculum of four years or more in a board-approved school, college, or university.

The FBPE must certify for licensure any applicant who has submitted proof of being at least 18 years old and has the required engineering experience. For graduates of an approved engineering science curriculum, the applicant must have a record of at least four years of active engineering experience sufficient to indicate competence to be in responsible charge of engineering. Graduates of an approved engineering technology curriculum must have a record of at least six years of such qualified experience.⁵³

A person who is licensed in another state is eligible for a professional engineering license by endorsement in Florida if the person:⁵⁴

- Graduated from an FBPE-approved engineering program, passed a licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination, and satisfied the experience requirements; or
- Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

FBPE deems that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 years.⁵⁵

FBPE also deems that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 15 years.⁵⁶

Currently, there are 40,789 licensed engineers who are able to practice in the state.⁵⁷

Architects

Chapter 481, Part I, F.S., governs the licensing and regulation of architects and related business organizations. The Board of Architecture and Interior Design (Architecture Board) is housed within DBPR. The Architecture Board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

To practice architecture, an applicant must:⁵⁸

- Complete a bachelor's or master's degree from an accredited architecture program.
- Complete the national architectural experience program, which takes approximately two years.

⁵² S. 471.013(1), F.S.

⁵³ See ss. 471.015(2)(a)1. and 2., F.S.

⁵⁴ S. 471.015(3), F.S.

⁵⁵ S. 471.015(5), F.S.

⁵⁶ *Id.*

⁵⁷ Email from Conner Mann, Legislative Affairs Coordinate, DBPR, Licensed Architects and Engineers (Feb. 8, 2022).

⁵⁸ Ss. 481.209, 481.211, and 481.213, F.S.

- Pass the national licensure examination given by the National Council of Architectural Registration Boards.

An architect who is licensed in another state and who seeks qualification for license by endorsement must complete a two-hour class approved by the Architecture Board on wind mitigation techniques.⁵⁹

Currently, there are 11,308 licensed architects who are able to practice in the state.⁶⁰

Effect of the Bill

The bill creates a mandatory recertification program for certain condominium and cooperative buildings.

The bill requires a condominium or cooperative to recertify any building that is three stories or higher in height and has been occupied for at least 30 years, or 25 years if the building is within three miles of the coastline of the state,⁶¹ as determined by the local building official.

A condominium or cooperative must recertify a building every 10 years after the initial recertification.

The bill defines “recertification” as a visual inspection of a building’s general structural condition and general condition of its electrical system, and a written report of such inspection. The visual inspection and written report must be performed by a person licensed as an engineer under ch. 471, F.S., or as an architect under ch. 481, F.S.

The bill defines “visual inspection” as a visual examination of the following components of a building:

- Roof.
- Load-bearing walls or other primary structural members.⁶²
- Floor.
- Foundation.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the above items, as determined by the licensed engineer or architect performing the visual inspection.

When a local building official determines that a condominium or cooperative building must be recertified, the local building official must provide written notice of required recertification to the association by certified mail, return receipt requested.

Within 90 days of receiving the written notice, or within 180 days if the association receives the notice before July 1, 2023, the association or the association’s manager must provide the written recertification report for the building and the date the association received the report, by e-mail or mail, to the local building official.

Within 14 days of receiving the written recertification report from the licensed engineer or architect performing the recertification, the association must provide the written report, by e-mail or mail, to each unit owner in the association.

⁵⁹ S. 481.213, F.S.

⁶⁰ Email from Conner Mann, *supra* note 57.

⁶¹ “Coastline” has the same meaning as in the Submerged Lands Act, 43 U.S.C. ss. 1301 et seq.

⁶² “Primary structural member” means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure.

Upon completing a recertification, the licensed engineer or architect performing the recertification must provide the written recertification report to the association. The written recertification report must, at a minimum:

- Indicate the manner and type of inspection forming the basis for the report and description of any items identified as requiring further inspection or remedial action.
- Bear the seal and signature of the licensed engineer or architect who performed the inspection.
- Indicate whether there is damage to the inspected items within a reasonable professional probability based on the scope of the inspection, and list any recommended repairs for such damage.
- Indicate whether there is substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection.
- State whether unsafe⁶³ or dangerous conditions⁶⁴ were observed.

If a written recertification report indicates there is substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, the local building official must require the association to perform a phase 2 inspection.

The bill defines “substantial structural deterioration” to mean substantial structural distress that negatively affects a building’s general structural condition and integrity. Surface imperfections, such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes are not signs of structural distress unless determined to be a sign of structural distress by the licensed engineer or architect performing the recertification or phase 2 inspection.

The bill defines a “phase 2 inspection” as an inspection that includes destructive and non-destructive testing at the discretion of the person performing the inspection, and a written report of such inspection. A phase 2 inspection must be performed by a person licensed as an engineer under ch. 471, F.S., or as an architect under ch. 481, F.S.

If a phase 2 inspection is required, the local building official must provide written notice of the required phase 2 inspection to the association by certified mail, return receipt requested.

Within 60 days of receiving the written notice, the association must provide written notice, by e-mail or mail, to the local building official providing the start date of the phase 2 inspection and the name and contact information of the licensed engineer or architect performing the phase 2 inspection.

A phase 2 inspection written report must, at a minimum:

- Bear the seal and signature of the licensed engineer or architect who performed the inspection.
- Indicate the manner and type of inspection forming the basis for the report.
- State whether there is substantial structural deterioration, within a reasonable professional probability based on the inspection, and the extent of the damage and list any recommended repairs for such damage.
- State whether unsafe or dangerous conditions were observed.

The engineer or architect performing the phase 2 inspection must provide the written report to the local building official and the association upon completion.

⁶³ The Building Code defines “unsafe” to mean buildings, structures or equipment that are unsanitary, deficient due to inadequate means of egress facilities, inadequate light and ventilation, constitute a fire hazard, the structure or individual structural members are dangerous, are otherwise dangerous to human life or the public welfare, or involve illegal or improper occupancy or inadequate maintenance. A vacant structure that is not secured against entry is also unsafe. Section 202 of the Seventh edition of the Florida Building (Existing).

⁶⁴ The Building Code defines “dangerous” as a building or structure that has collapsed, has partially collapsed, has moved off its foundation or lacks the necessary support of the ground, or there exists a significant risk of collapse, detachment or dislodgment of any portion, member, appurtenance or ornamentation of the building or structure under service loads. Section 202 of the Seventh edition of the Florida Building (Existing).

Within 14 days of receiving the written phase 2 inspection report from the licensed engineer or architect performing such inspection, the association must provide the written report, by e-mail or mail, to each unit owner in the association.

The bill provides that a local building official may determine penalties for failing to comply with the requirements for building recertifications and phase 2 inspections. The penalties must be posted on the local building department's website.

If an association fails to begin or schedule any repairs to the items that are identified in a written phase 2 inspection report as needing repairs, within a time period determined by the county commissioners of the county where the building is located, the local building official must determine that the building is unsafe for human occupancy until work on such repairs are started.

In no circumstance may the time period to start such repairs exceed 365 days after the local building official receives the written phase 2 inspection report.

The bill provides that it is a breach of a board member or officer's fiduciary duty if an association fails to complete a recertification or phase 2 inspection.

Community Association Managers

Current Situation

Current law establishes licensure requirements for community association managers.⁶⁵ A community association manager or firm must be licensed if he or she serves as management for an association of more than 10 units or an association with a budget of \$100,000 or greater.⁶⁶ Community association managers are licensed by DBPR. The profession is overseen by the Regulatory Council of Community Association Managers (Council).⁶⁷

Current law provides that a community association manager or a community association management firm must discharge their duties performed on behalf of the association:⁶⁸

- 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.

DBPR investigates complaints filed against community association managers or firms⁶⁹ and may impose the following administrative penalties against licensed community association managers:⁷⁰

- Denial of an application for licensure.
- Revocation or suspension of a license.
- Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.
- Issuance of a reprimand.
- Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

⁶⁵ Ch. 468, Part VIII, F.S.

⁶⁶ S. 468.432(2), F.S.

⁶⁷ S. 468.4315, F.S.

⁶⁸ S. 468.4334(1), F.S.

⁶⁹ S. 468.436, F.S.

⁷⁰ S. 468.436(4), F.S.

- Restriction of the authorized scope of practice by the community association manager.

The grounds for disciplinary action include the following:⁷¹

- Violating any provision of community association management practice act or lawful order of DBPR or the Council.
- Violating the Condominium Act, the Cooperative Act, or the Homeowners' Association Act when such violation is committed during the course of performing community management services pursuant to a contract with an association.
- Violating any provision relating to regulation of professions by DBPR.
- Committing acts of gross misconduct or gross negligence in connection with community association management.
- Making misleading, deceptive, or fraudulent representations related to community association management.
- Being convicted of or pleading nolo contendere to a felony in any court in the United States.
- Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.
- Contracting, on behalf of an association, with any entity in which the manager has a financial interest that is not disclosed.

Effect of the Bill

The bill provides that if a community association manager or firm has a contract with a condominium or cooperative association with a building that is subject to a recertification, the community association manager or firm has a duty to comply with the requirements for recertification.

The bill provides that receiving a written recertification report and failing to provide the report to a local building official during the course of performing community association management services pursuant to a contract with a condominium or a cooperative, is grounds for disciplinary action.

Structural Integrity Reserve Study

Current Situation

A reserve study is a budget-planning tool for community associations. Generally, a reserve study consists of the following two parts:⁷² physical analysis and financial analysis.

The physical analysis of a reserve study lists components in a community association that the association is responsible to maintain or replace, which is usually a visual inspection of the community association. The physical analysis includes an assessment of the physical condition of the association property, a determination of the estimated remaining life for each component in the association, and the estimated cost to maintain or replace such components.⁷³

The financial analysis of a reserve study is performed after the physical analysis is completed, and the association's annual budget and reserve funds have been reviewed. The financial analysis is a recommended funding plan that provides an appropriate reserve contribution rate for the components identified in the physical analysis to ensure the association will have the necessary reserves to maintain or replace each component.⁷⁴

⁷¹ S. 468.436(2), F.S.

⁷² Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, <https://cedarmanagementgroup.com/hoa-reserve-study-community/#what> (last visited Jan. 6, 2022); Kevin Leonard and Robert Nordlund, *Understanding Reserves: A guide to your association's reserve fund & reserve study*, 26-29 (1st ed. 2021); Community Associations Institute, *National Reserve Study Standards*, <https://www.reservestudy.com/wp-content/uploads/2019/01/NRSS-998-CAI-version-updated-2016.pdf> (last visited Jan. 6, 2022).

⁷³ *Id.*

⁷⁴ *Id.*

Currently, the following nine states require community associations to have regular reserve studies or encourage community associations to have regular reserve studies:⁷⁵ California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington. However, of the nine states that require or encourage community associations to have regular reserve studies, only Delaware requires community associations to fund reserve accounts.⁷⁶

Effect of the Bill

The bill requires condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.

The bill defines “structural integrity reserve study” as 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. At a minimum, it must:

- Identify the common elements being visually inspected.
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common elements being inspected.
- Provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common element being inspected by the end of the estimated remaining useful life for each common element.

The visual inspection must be performed by a person licensed as an engineer under ch. 471, F.S., or an architect under ch. 481, F.S. Any qualified person or entity may perform the other components of a structural integrity reserve study.

At a minimum, the following items must be included in a structural integrity reserve study for each building in an association that is three stories or more in height:

- Roof.
- Load-bearing walls or other primary structural members.⁷⁷
- Floor.
- Foundation.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed above, as determined by the licensed engineer or architect performing the visual inspection.

Prior to a developer turning over control of an association to unit owners, the developer must have a structural integrity reserve study completed for each building in the association that is three stories or more in height.

Associations existing on or before July 1, 2022, that are controlled by unit owners, must have a structural integrity reserve study completed by July 1, 2024, for each building in the association that is three stories or more in height.

⁷⁵ Community Associations Institute, *Reserve Requirements and Funding*, <https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx#UT> (last visited Jan. 6, 2022).

⁷⁶ *Id.*

⁷⁷ “Primary structural member” means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure.

The bill provides that it is a breach of a board member or officer's fiduciary duty if an association fails to complete a structural integrity reserve study.

Reserves

Current Situation

Every condominium and cooperative association must have a budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the association. The budget is adopted for a 12-month period reflecting an association's fiscal year, and it must provide a detailed listing of the estimated revenues and expenses that the association reasonably projects for the coming fiscal year. The annual budget is made up of two parts, the part covering the regular operations of the association and the part covering the cost for capital expenses and deferred maintenance (reserves).⁷⁸

Reserves are funds that are set aside for capital expenses and deferred maintenance. Reserves provide funds for major capital repairs or replacements that are needed intermittently such as replacing a roof. The reserves are designed to ensure that an association will have the funds when the repairs are needed and will not have to do a large special assessment.⁷⁹

Current law requires associations to have and fund reserve accounts for roof replacement, building painting, pavement resurfacing, and any item for which the deferred maintenance expense or replacement cost is greater than \$10K.⁸⁰

There are two methods of calculating the reserves. The first is the traditional formula and the second is the alternative formula. The traditional formula takes into account the estimated deferred maintenance or capital expenditure amount, estimated fund balance, and number of years remaining until deferred maintenance or a capital expenditure is needed.⁸¹

For example, the remaining useful life of the roof is four years, the estimated cost to replace the roof is \$86,000, and \$50,000 is in the roof reserve account when the budget becomes effective. To determine the amount that must be deposited during the proposed budget year, subtract \$50,000 from \$86,000. The result is \$36,000. Then, divide this amount by the remaining useful life of four years. The final answer is that \$9,000 is the current year funding requirement. $(\$86,000 - \$50,000) / 4 = \$9,000$.⁸²

The alternative formula allows associations to maintain a pooled account for multiple reserve assets that are similar or related. For example, an association responsible for managing two swimming pools may create a pool reserve account for both pools instead of a reserve account for each pool. The formula for a pooled account must provide for an annual contribution that will ensure the balance on hand in the account is equal to or greater than the annual projected outflows from the account.⁸³

Waiver of Reserves

Associations can waive funding reserves for capital expenditures and deferred maintenance or provide funds that are less than the required amount by a majority of the voting interests present at a properly called meeting. The waiver of reserves by the membership is only for the current year, and a separate vote must be taken each year to waive the reserves or fund less than the required amount.⁸⁴

⁷⁸ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

⁷⁹ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

⁸⁰ *Id.*

⁸¹ *Id.*; Rules 61B-22.005(3), and Rule 61B-76.005(1), F.A.C.

⁸² DBPR, *BUDGETS & RESERVE SCHEDULES: A Self-Study Training Manual*, 41-42

<http://www.myfloridalicense.com/dbpr/lsc/documents/BudgetsandReserveSchedules.pdf> (last visited Jan. 9, 2022).

⁸³ Rules 61B-22.005(1) and (3), and Rule 61B-76.005(1) and (3), F.A.C.

⁸⁴ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.; Rules 61B-22.005(8), and Rule 61B-76.005(8), F.A.C.

Associations may also vote to use reserve funds for purposes other than their intended purpose, such as using funds from the roof reserve account for painting buildings, by a majority of the voting interests present at a properly called meeting.⁸⁵

Prior to a developer turning over an association to unit owners, the developer may use the voting interests allocated to his or her units to waive the reserves or reduce the funding of reserves for the first two years of the association. After the first two years, the collection of reserve funds may only be waived or reduced by a vote of a majority of all nondeveloper voting interests at a duly called meeting of the association. After the turnover of an association, a developer may still vote its voting interest to waive or reduce the funding of reserves.⁸⁶

Effect of the Bill

The bill provides that the amount of funds placed in reserve is determined by the condominium or cooperative association's most recent structural integrity reserve study. If the amount to be reserved for an item is not in the association's most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, then the association may use the traditional formula or alternative formula to determine the amount of funds to reserve.

The bill provides that effective July 1, 2024, a unit-owner controlled association may not waive collecting reserves or collect less reserve funds than required for items that are required to be inspected in a structural integrity reserve study for an association building that is three stories or higher in height. In addition, unit-owner controlled associations may not use such reserve funds for purposes other than their intended purpose.

The bill repeals the ability of a developer-controlled association to waive collecting reserves or reduce the funding of reserves. The bill also repeals the ability of a developer-controlled association to use reserves funds for purposes other than their intended purposes.

Official Records

Current Situation

Condominiums and cooperatives must maintain certain records known as official records for at least seven years, including:⁸⁷

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association (governing documents).⁸⁸
- Meeting minutes.
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners or members consenting to receive notice by electronic transmission.
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation.
- The association's accounting records.
- All contracts for work to be performed, including bids for work, materials, and equipment, except that associations are only required to maintain bids for one year.
- A copy of the plans, permits, warranties, and other items provided by the developer.
- All other written records related to the association's operation.

Owners may inspect and copy an association's official records, and the association must make records available for inspection within 10 business days of receiving an inspection request.⁸⁹ An association

⁸⁵ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

⁸⁶ *Id.*

⁸⁷ Ss. 718.111(12)(a) and (b) and 719.104(2), F.S.

⁸⁸ Condominiums must permanently maintain their governing documents.

⁸⁹ *Id.*

must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the condominium or cooperative is located.⁹⁰

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but may not require an owner to state a reason for inspecting the records. A condominium unit renter may inspect and copy the association's governing documents.⁹¹

An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen.⁹²

Website

Condominiums with 150 or more units that do not manage timeshare units must post certain documents to a website or an app that is accessible only to unit owners and condominium employees. The website or app must include:⁹³

- The condominium's governing documents.
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility.
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website or app for one year.
- The annual budget to be considered at the annual meeting.
- The financial report to be considered at a meeting.
- Each director's certification.
- All contracts or transactions between the condominium association and any director, corporation, firm, or association that is not an affiliated condominium association or any other entity in which a condominium director is also a director or officer and financially interested.
- Any contract or document regarding the conflict of interest or possible conflict of interest of a manager or a board member.
- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting in plain view on the front page or on a separate subpage.
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.

Effect of the Bill

The bill provides that structural integrity reserve studies, written recertification reports, and phase 2 inspection reports are part of a condominium or cooperative association's official records. A condominium and cooperative association must permanently maintain written recertification reports and phase 2 inspection reports, and an association must maintain structural integrity reserve studies for at least 15 years.

A renter of a condominium unit has a right to inspect and copy the association's written recertification reports and phase 2 inspection reports.

The bill provides that if a condominium association is required to have a website or an application, the condominium must post the association's most recent structural integrity reserve study, written recertification report, and phase 2 inspection report on the website or app.

⁹⁰ *Id.*

⁹¹ Ss. 718.111(12)(b) and (c)1. and 719.104(2)(b), F.S.

⁹² *Id.*

⁹³ S. 718.111(12)(g), F.S.

Termination of a Condominium

Current Situation

Current law provides that it is against public policy in the state to require condominium operations to continue when doing so constitutes economic waste or is made impossible by law or regulation. Current law also provides that it is in the best interest of the state to provide for termination of a condominium in certain circumstances in order to protect residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.⁹⁴

There are two primary grounds for termination, each governed by its own requirements.

First, a condominium may be terminated where there is economic waste or impossibility by a plan of termination approved by the lowest percentage of voting interests necessary to amend the condominium's declaration or as otherwise provided in the declaration for approval of termination, whichever is lower.⁹⁵ A condominium may be terminated for "economic waste" if the total cost of construction or repairs necessary to construct the 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. A condominium may be terminated for "impossibility" if it becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.⁹⁶

Second, a condominium may be terminated in the discretion of the owners.⁹⁷ Referred to as "optional termination," a condominium may be terminated if the termination is approved by at least 80 percent of the total voting interests of the condominium and no more than five percent of the total voting interests of the condominium reject the termination.⁹⁸ The Division must confirm that the termination plan complies with the statutory requirements. If five percent or more of the total voting interests reject a plan of termination, another plan of optional termination may not be considered for 18 months after the date of rejection.⁹⁹

A plan of termination must state the valuation of each unit as well as the value of the common elements and other assets of the condominium. The plan must identify the termination trustee, usually the association,¹⁰⁰ and state the individual interests of each unit owner in the proceeds from the liquidation of the assets of the condominium upon its termination. A copy of the plan must be provided to every unit owner at least 14 days before the meeting to approve the plan.¹⁰¹

Once the plan has been approved, it must be sent to every unit owner within 30 days of recording the plan with the clerk of court and to the Division within 90 days of recording the plan.¹⁰²

⁹⁴ S. 718.117(1), F.S.

⁹⁵ S. 718.117(2), F.S.

⁹⁶ *Id.*

⁹⁷ S. 718.117(3), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ The association serves as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. S. 718.117(13), F.S.

¹⁰¹ S. 718.117(9) and (10), F.S.

¹⁰² S. 718.117(15), F.S.

Effect of the Bill

The bill provides that a condominium, which has a building that has received a phase 2 inspection with recommended substantial structural deterioration repairs that exceed 65 percent of the combined fair market value of the units in the condominium after completion of the construction or repairs, may be terminated pursuant to a plan of termination approved by a majority of the total voting interests of the condominium. Such termination must be approved at a properly called meeting of the association with the voting interests voting in person or by limited proxy.¹⁰³ A bulk owner¹⁰⁴ has the same number of voting interests as a single unit owner.

Written notice of the meeting must include an agenda that conspicuously states a plan of termination of the condominium will be considered. The written notice must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. The notice must also be posted in a conspicuous place on the condominium association property at least 14 continuous days before the meeting.

The bill provides that the fair market value of the units must be determined no earlier than 90 days before the date that the plan of termination is recorded and must be determined by an independent appraiser selected by the termination trustee.

Delivery of Documents after Transition of Board

Current Situation

The developer creates the association and appoints the first board of administration at the time the condominium or cooperative is created. After control of the board is transferred to the unit owners the developer must deliver all of the property of the association, which is held or controlled by the developer or the developer-controlled board, to the association. The developer is responsible for any expenses for providing the property.¹⁰⁵

The property the developer must turn over includes, but is not limited to:¹⁰⁶

- All tangible personal property that is property of the association.
- Insurance policies for the association.
- Funds of the association.
- Copies of the association's governing documents.
- Copies of certificates of occupancy.
- Written warranties from contractors or suppliers that are still effective.
- Governmental permits for the association property.
- Copies of all agreements and contracts to which the association is a party.
- List of all contractors, subcontractors, and suppliers who worked on the property or provided supplies.
- A roster of the unit owners and their addresses and telephone numbers, if known.
- The resignation of the board members and officers of the developer-controlled board.
- A copy of the plans and specifications utilized in the construction or remodeling of the condominium.
- Financial records of the association.

¹⁰³ A limited proxy requires the proxy to vote in a specific way as determined by the owner. A specific form for limited proxy is provided by the association. The Condominium Act requires limited proxies when a proxy is used for votes to waive or reduce reserves, waive the financial reporting requirements, amend the declaration, the articles of incorporation, or bylaws, and for any other matter where a vote of a unit owner is required or permitted. S. 718.112(2)(b), F.S.

¹⁰⁴ "Bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in the Uniform Fraudulent Transfer Act, holding such voting interests. S. 718.117(3), F.S.

¹⁰⁵ Ss. 718.301(4) and 719.301(4), F.S.

¹⁰⁶ *Id.*

The developer of the condominium must also provide a report attesting to the maintenance requirements, useful life, and estimated replacement costs for improvements of the condominium property under seal of a licensed architect or engineer.¹⁰⁷

Effect of the Bill

The bill provides that a developer must turn over the structural integrity reserve study completed for each building in the association that is three stories or more in height, and any written recertification reports or phase 2 inspection reports if a building has been required to recertify or have a phase 2 inspection.

Sale of a Unit

Current Situation

Developers and nondeveloper owners of condominium or cooperative units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit.¹⁰⁸

Prior to the sale of a unit by a non-developer, prospective buyers are entitled to a copy of the following association documents, at the seller's expense:¹⁰⁹

- The association's most recent financial information.
- The association's governance document, which explains the association's operations.
- The frequently asked questions and answers sheet.
- The association's governing documents.

These documents must be provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract, or the sales contract is voidable by the prospective purchaser. These disclosures do not apply to the leasing of a residential unit by a nondeveloper owner.¹¹⁰

The contract for the sale of a unit must contain a clause where the buyer acknowledges receiving such documents and an opportunity of at least three business days to review them.¹¹¹

A developer must provide prospective buyers or renters who are signing a lease of more than five years, with:¹¹²

- The association's most recent financial information.
- The association's governance document, which explains the association's operations.
- The frequently asked questions and answers sheet.
- The prospectus or offering circular.

The contract for the sale or lease of a unit must contain a clause stating the buyer or renter has 15 days after signing the contract and receiving such documents to void the contract.¹¹³

¹⁰⁷ S. 718.301(4), F.S.

¹⁰⁸ Ss. 718.503 and 719.503, F.S.

¹⁰⁹ Ss. 718.503(2) and 719.503(2), F.S.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Ss. 718.503, 718.504, 719.503, and 719.504, F.S.

¹¹³ *Id.*

The developer may not close for 15 days following the execution of a purchase contract, or execution of the lease, and the delivery of the required documents to the buyer. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.¹¹⁴

Prospectus or Offering Circular

Every developer of a residential condominium or cooperative which contains more than 20 residential units, or which is part of a group of residential condominiums or cooperatives that will be served by property to be used in common by unit owners of more than 20 residential units, must prepare a prospectus or offering circular and file it with the Division prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than five years. A copy of the prospectus or offering circular must be provided to each buyer.¹¹⁵

The prospectus or offering circular is an introductory synopsis to the association's governing documents. It sets forth a summary of all the restrictions, financial obligations, and liabilities of the owner. It also sets forth the commitments and responsibilities of the association. The prospectus or offering circular must contain certain information about the condominium or cooperative, including an estimated operating budget for the association, and a schedule of the unit owner's expenses.¹¹⁶

Effect of the Bill

The bill provides that prior to the sale of a unit, or the lease of a unit by a developer that is for more than five years, a prospective buyer or renter is entitled to the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

If the unit is in a building which has been required to recertify or have a phase 2 inspection, the prospective buyer or renter is entitled to a copy of the association's most recent written recertification report or phase 2 inspection report or a statement that the association has not completed the required recertification or phase 2 inspection.

The bill also requires the prospectus or offering circular to include the association's most recent structural integrity reserve study, or a statement that the association has not completed a structural integrity reserve study. If the unit is in a building that is required to recertify or have a phase 2 inspection, the prospectus must include a copy of the association's most recent written recertification report or phase 2 inspection report or a statement that the association has not completed the required recertification or phase 2 inspection.

Enforcement of the Condominium Act and Cooperative Act

Current Situation

For condominium associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee. Once a developer has turned over control of the condominium to the association the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.¹¹⁷

For cooperative associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Cooperative Act.¹¹⁸

¹¹⁴ Ss. 718.503(1) and 719.503(1), F.S.

¹¹⁵ Ss. 718.504 and 719.504, F.S.

¹¹⁶ *Id.*

¹¹⁷ S. 718.501(1), F.S.

¹¹⁸ S. 719.504(1), F.S.

If a person believes there is a violation of the Condominium Act or Cooperative Act, he or she may file a complaint with the Division. If the complaint is within the Division's jurisdiction, the Division assigns an investigator to the complaint. After investigating the complaint, if the Division has reasonable cause to believe that a violation occurred, it may initiate an enforcement proceeding in its own name as follows:¹¹⁹

- Enter in a voluntary consent proceeding with the person who violated the Condominium Act or Cooperative Act where he or she consents to stopping the violation.
- Issue a cease and desist.
- File an administrative complaint against the person.
- File an enforcement action in circuit court to seek declaratory or injunctive relief on behalf of the unit owners.
- Remove an individual from his or her position as an officer or board member of a condominium or cooperative.
- Impose civil penalties in the amount of up to \$5,000 per violation.

In order to enforce the Condominium Act and Cooperative Act, the Division may conduct investigations, take sworn statements, receive evidence, and subpoena individuals and documentation. If the Division believes a person has destroyed or altered association documents or impaired the availability of association documents during an investigation, the Division must refer it to local law enforcement.¹²⁰

Effect of the Bill

The bill provides that the Division has authority to investigate condominium and cooperative complaints related to the procedural completion of structural integrity reserve studies, recertifications, and phase 2 inspections.

The bill provides that newly created associations must provide the Division with the number of buildings in the association that are three stories or higher in height, the number of units in such buildings, and the address of such buildings on a form prescribed by the Division. New condominiums have 120 calendar days to provide the information to the Division and new cooperatives have 30 working days to provide the information.

Associations existing on or before July 1, 2022, have until January 1, 2023, to provide the information to the Division. The associations must send the information by e-mail, mail, or hand delivery to an e-mail address or physical address provided by the Division and on a form that is posted to the Division's website.

Every condominium and cooperative association must provide an update to the Division if there is any change in the number of buildings in the association that are three stories or more or the number of units in such buildings. An association must provide the update in writing, by e-mail or mail, to the Division within six months of the change.

The Division must compile a list of the number of buildings on condominium property that are three stories or higher in height and must post the list on the Division's website. The list must be searchable by county. The list must include:

- The name of each association with buildings on the condominium property that are three stories or higher in height.
- The number of such buildings in each association.
- The addresses of all such buildings.
- The county in which such buildings are located.

Appropriation

¹¹⁹ Ss. 718.501(1)(d) and (m) and 719.501(1)(d) and (m), F.S.

¹²⁰ Ss. 718.501(1)(c) and 719.501(1)(c), F.S.

The bill appropriates DBPR a total of \$500,944 (\$333,380 recurring and \$167,564 nonrecurring) from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. Additionally, the bill authorizes four full time equivalent positions with an associated salary rate of 197,500. The funding and positions are provided to implement provisions of the bill.

B. SECTION DIRECTORY:

- Section 1. Amends s. 468.4334, F.S., relating to professional practice standards; liability.
- Section 2. Amends s. 468.436, F.S., relating to disciplinary proceedings.
- Section 3. Amends s. 718.103, F.S., relating to definitions.
- Section 4. Amends s. 718.104, F.S., relating to the creation of condominiums; contents of declaration.
- Section 5. Amends s. 718.111, F.S., relating to the association.
- Section 6. Amends s. 718.112, F.S., relating to bylaws.
- Section 7. Amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.
- Section 8. Amends s. 718.117, F.S., relating to termination of condominium.
- Section 9. Creates s. 718.132, F.S., relating to building recertification.
- Section 10. Amends s. 718.301, F.S., relating to transfer of association; control; claims of defect by association.
- Section 11. Amends s. 718.501, F.S., relating to authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Section 12. Amends s. 718.503, F.S., relating to developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.
- Section 13. Amends s. 718.504, F.S., relating to prospectus or offering circular.
- Section 14. Amends s. 719.103, F.S., relating to definitions.
- Section 15. Amends s. 719.1035, F.S., relating to the creation of cooperatives.
- Section 16. Amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchases of leases.
- Section 17. Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.
- Section 18. Creates s. 719.132, F.S., relating to building recertification.
- Section 19. Amends s. 719.301, F.S., relating to transfer of association control.
- Section 20. Amends s. 719.501, F.S., relating to powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Section 21. Amends s. 719.503, F.S., relating to disclosure prior to sale.
- Section 22. Amends s. 719.504, F.S., relating to prospectus or offering circular.

- Section 23. Amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.
- Section 24. Amends s. 720.311, F.S., relating to dispute resolution.
- Section 25. Amends s. 721.15, F.S., relating to assessments for common expenses.
- Section 26. Provides an appropriation.
- Section 27. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates DBPR a total of \$500,944 (\$333,380 recurring and \$167,564 nonrecurring) from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. Additionally, the bill authorizes four full time equivalent positions with an associated salary rate of 197,500. The funding and positions are provided to implement provisions of the bill.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, negative fiscal impact to local governments. Local building departments may have to expend funds to enforce the building recertification program. It is unclear what the cost will be, if any, for local building departments to enforce such program.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Condominium and cooperative associations and unit owners in those communities may incur additional expenses related to recertifications and reserve studies. However, the bill may have a positive economic impact on condominium and cooperative associations by alerting them to necessary building repairs before the costs for such repairs increases. According to news reports, the cost for repairs for Champlain Towers South identified in the 2018 engineering report increased from over \$9 million in 2018 to over \$12 million in 2020.¹²¹

C. FISCAL COMMENTS:

According to DBPR, Miami-Dade County's and Broward County's recertification inspections can cost as much as \$20,000-\$40,000 for the inspection of a 15-20 story condominium and between \$2,000 and \$4,000 for the inspection of a small commercial building.¹²²

¹²¹ Casey Tolan, *Condo owners in Surfside building were facing assessments for \$15 million worth of repairs*, CNN (Jun. 29, 2021) <https://www.cnn.com/2021/06/28/us/surfside-condo-owners-assessments-invs/index.html> (last visited Jan. 26, 2022); Erin Snodgrass, *Surfside residents and the condo association board fought over building repairs in the months leading up to collapse*, Insider (Jul. 5, 2021) <https://www.insider.com/surfside-residents-and-board-fought-over-repairs-before-collapse-2021-7> (last visited Jan. 26, 2022).

¹²² Florida Department of Business and Professional Regulation, Agency Analysis of 2022 Senate Bill 1702, p. 8 (Jan. 7, 2022).

The bill's recertification program may have similar costs on condominium and cooperative buildings that are required to recertify.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires local governments to notify condominium and cooperative associations about required building recertifications and enforce the building recertification program. This may result in additional expenditures to comply with the statute. However, an exemption may apply because the fiscal impact is likely to be insignificant since local governments currently enforce the Building Code and require building permits and inspections for new construction.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2022, the Appropriations Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provides a definition for "substantial structural deterioration" for determining if a phase 2 inspection is required, and clarifies that a recertification or phase 2 inspection report must indicate if unsafe or dangerous conditions were observed.
- Renames reserve study to "structural integrity reserve study," which clarifies that all other reserve studies are up to the association.
- Clarifies that only the visual inspection component of a structural integrity reserve study must be performed by an engineer or architect. The other components may be performed by any qualified individual or entity.
- Repeals the ability for developer-controlled associations to waive collecting all types reserves, instead of only prohibiting it for the first two years after the association is created.
- Specifically provides that board members have a fiduciary duty to comply with building recertification requirements and mandatory reserve funding.
- Clarifies that association managers have a duty to provide a recertification report to a local building official if the manager receives the report.
- Clarifies the notice and voting procedures for the termination of the condominium in limited circumstances.
- Requires new condominiums and cooperatives to provide the Division with the number of multi-story buildings when they provide the association's declaration to the Division.
- Requires DBPR to compile the data of the number of multi-story buildings into a searchable report on DBPR's website.
- Provides an appropriation of \$500,944 and authorizes four positions to implement.

The staff analysis is drafted to the committee substitute as passed by the Appropriations Committee.