

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1395 Management and Safety of Condominium and Cooperative Buildings
SPONSOR(S): Commerce Committee and Regulatory Reform & Economic Development Subcommittee, Lopez, V. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 154

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1395 passed the House on May 2, 2023, as CS/CS/SB 154, as amended, and subsequently passed the Senate on May 3, 2023.

On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium building in the Town of Surfside, partially collapsed resulting in the death of 98 people. In response, during Special Session, 2022D, SB 4-D was enacted to provide building safety inspection requirements (milestone inspections) and reserve requirements (structural integrity reserve study, or SIRS) for condominium and cooperative buildings.

The bill clarifies provisions created by SB 4-D. Specifically, the bill:

- Requires certain condominium and cooperative buildings to have a milestone inspection when they reach 30 years of age, or when certain coastal buildings reach 25 years as determined by the local government.
- Allows local governments to extend the deadline to complete a milestone inspection, under certain circumstances.
- Allows condominiums and cooperatives to use prior inspection reports completed within the last 5 years for both the milestone inspection and SIRS, under certain circumstances.
- Requires phase 2 of milestone inspections to begin within 180 days of completing phase 1, if necessary.
- Allows a certified reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform the SIRS visual inspection.
- Limits setting mandatory reserves for only those SIRS items maintained by association and that have 25 years or less of useful life left.
- Requires the Florida Building Commission to create a building safety program.
- Requires milestone inspection and SIRS reports and disclosures to be included in sales contracts.
- Allows unit owners to utilize pre-suit mediation to resolve certain disputes related to milestone inspections and SIRS.
- Allows certain multicondominiums to utilize an alternative funding method approved by the Department of Business and Professional Regulation in lieu of maintaining reserves for SIRS items.
- Provides that the responsibility to maintain certain common elements may be assigned to the unit owner by the declaration.

Regarding new flood insurance coverage requirements in SB 2-A from Special Session 2022A, the bill provides that policyholders with policies that provide coverage under a condominium unit owners form are not required to purchase flood insurance as a condition for maintaining their Citizens policies.

The bill may have an insignificant negative fiscal impact on state government and does not appear to affect local governments. The bill provides for \$1,301,928 in recurring funds, \$67,193 in nonrecurring funds, and 10 FTEs. See Fiscal Analysis & Economic Impact Statement.

The bill was approved by the Governor on June 9, 2023, ch. 2023-203, L.O.F., and became effective on that date.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Community Associations – Background

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), (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

It is a breach of a board member or officer's fiduciary duty if an association fails to complete a milestone inspection or structural integrity reserve study.

Florida Building Code

In response to the destruction of Hurricane Andrew, in 1998, the Legislature approved a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.⁹

The "Florida Building Codes Act" was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁰

The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building 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 Code. The Building Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.¹¹

Local 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.¹² Every local government must enforce the Building Code and issue building permits.¹³ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency 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.¹⁴

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.¹⁵ Construction work may not be done beyond a certain point until it

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 Mar. 19, 2023).

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

⁹ *Id.*

¹⁰ See s. 553.72(1), F.S.

¹¹ Ss. 553.73 and 553.74, F.S.

¹² S. 553.72, F.S.

¹³ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁴ Ss. 125.56(4)(a) and 553.79(1), F.S.

¹⁵ 2020 Florida Building Code (7th ed.), s. 110.

passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.¹⁶

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. Mandatory inspections of existing condominium buildings were once required by Florida law, 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 the common elements every five years by an engineer or architect licensed in the state.¹⁷ A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association.¹⁸ This provision was repealed in 2010.¹⁹

Threshold Buildings

In 1981, a “five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more.”²⁰ In response to this tragedy, the Legislature instituted threshold building inspections, requiring licensed “special inspectors” to conduct structural inspections for all threshold buildings.²¹ A special inspector is a licensed architect or registered engineer to conduct inspections of threshold buildings.²²

A threshold building is defined as any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification, as defined in the Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.²³ An enforcing agency must require a special inspector to perform structural inspections on a threshold building during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.²⁴

For a building that qualifies as a threshold building, a structural inspection plan must be submitted by the special inspector and the design professional of record to the enforcing agency prior to the issuance of a building permit for the construction of or modification to the building.²⁵ However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.²⁶

The inspection plan for a threshold building provides specific inspection instructions or the adequate inspection of construction. The owner must retain the services of a special inspector who must inspect the building according to the special inspection plan. In addition, the inspector must determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.²⁷ Special

¹⁶ Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9320Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Mar. 19, 2023).

¹⁷ Ch. 2008-28, L.O.F.

¹⁸ *Id.*

¹⁹ Ch. 2010-176, s. 59, L.O.F.

²⁰ National Institute of Standards and Technology, *Harbour Cay Condominium Collapse Florida 1981*, available at <https://www.nist.gov/el/harbour-cay-condominium-collapse-florida-1981> (last visited Mar. 19, 2023).

²¹ Florida Building Commission, *Florida Building Construction Standards* available at https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf (last visited Mar. 19, 2023).

²² *See* s. 553.71, F.S.

²³ *Id.*

²⁴ S. 553.79(5)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

inspectors report directly to local building administrators. The role of threshold building inspectors is unique to Florida.²⁸

Champlain Towers South and SB 4-D (Special Session D 2022)

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 progress updates, but because of the amount of evidence and, the investigation could take multiple years to complete.²⁹

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,³⁰ including issues with the pool deck³¹ and building design flaws.³² 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.³³

In response to the Champlain Towers South collapse, during the Special Session D, 2022, SB 4-D³⁴ was enacted to revise the laws related to building safety. The bill provided building safety inspection requirements for condominium and cooperative association buildings (milestone inspections), increased the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revised the requirements for associations to fund reserves for the continued maintenance and repair of such buildings (structural integrity reserve study).

SB 4-D required the Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill. This report was completed on December 14, 2022, and some of the recommendations were included in the bill.

²⁸ Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Mar. 19, 2023).

²⁹ 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 Mar. 19, 2023).

³⁰ 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.

³¹ 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 Mar. 19, 2023); 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 Mar. 19, 2023).

³² 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 May 31, 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 Mar. 19, 2023).

³³ 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 Mar. 19, 2023); 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 Mar. 19, 2023).

³⁴ Ch. 2022-269, L.O.F.

SB 4-D also required associations to report to the Division on or before January 1, 2023, the number of buildings that are three stories or higher in height and the total number of units in such buildings and required the division to publish that information on its website. While the full report is being completed by the Division, the total number of reporting entities is 6,132, the total number of buildings 3 stories or higher is 22,338, and the total number of units is 688,439.³⁵

Age of Condominium Buildings

There are 1,529,764 condominium units in Florida operated by 27,588 associations. Of those units:³⁶

- 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.³⁷

Local Building Recertification Programs

Until 2022, Florida does not generally require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country.³⁸ However, local governments adopted 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.³⁹

Miami-Dade and Broward Counties have amended their local building codes to require a recertification process and inspection of buildings 40 years and older. Miami-Dade's program was established in 1975,⁴⁰ and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.⁴¹

Miami Dade's recertification program states that:

All buildings, except single-family residences, duplexes and minor structures as defined below, shall be recertified in the manner described below where such buildings or structures have been in existence for forty (40) years or longer, as

³⁵ Email from Jonas Marquez, Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: Condo/Co-Op Reporting (Feb. 15, 2021).

³⁶ 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 Mar. 19, 2023).

³⁷ *Id.*

³⁸ Department of Business and Professional Regulation, Agency Analysis of 2022 Senate Bill 1702, p. 2 (Jan. 7, 2022).

³⁹ *Id.*

⁴⁰ Miami-Dade Recertification at

<https://www.miamidade.gov/global/economy/building/recertification.page#:~:text=Miami%20Dade%20County%20has%20had,amended%20on%20June%201%2C%202022> (last visited Mar. 19, 2023).

⁴¹ Broward County, Building Safety Inspection Program, available at

<https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Mar. 19, 2023).

determined by the Building Official, who shall at such time issue a Notice of Required Inspection to the building owner. Subsequent recertification shall be required at ten (10) years interval. In the event a building is determined to be structurally and electrically safe under the conditions set forth herein, and such building or structure is less than forty (40) years of age, recertification shall not be required for a minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.⁴²

Inspection procedures must “conform, in general, to the minimum inspection procedural guidelines” issued by the county, and are for the purpose of determining the general structural condition of the building or structure to the extent reasonably possible which affects the safety of the building or structure.⁴³ Miami-Dade’s recertification program exempts buildings under 2,000 square feet,⁴⁴ and Broward’s program exempts buildings under 3,500 square feet.⁴⁵ The inspections must be carried out by a professional engineer or architect registered with the State of Florida.⁴⁶

Following the 2021 tragedy in Surfside, Florida, the concept of recertification programs gained considerable attention. The City of Boca Raton recently instituted a building recertification program for buildings over 30 years of age that are greater than three stories or 50 feet in height, or greater than 5,000 square feet and have an occupancy greater than 500 people.⁴⁷

Milestone Inspections – Current Situation

Under s. 553.899, F.S, a "milestone inspection" means a structural inspection of a building, including an inspection of load-bearing walls, primary structural members, and primary structural systems⁴⁸ by a licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the fire safety code.

A condominium or cooperative must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline⁴⁹, the condominium or cooperative must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. This requirement does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

If a milestone inspection is required and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy is to be the date of occupancy evidenced in any record of the local building official.

⁴² See Code of Miami-Dade, ch. 8 Building Code, s. 8-11(f)(ii), at https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH8BUCO_ARTIAD_S8-11EXBU (last visited Mar. 19, 2023).

⁴³ *Id.* at s. 8-11(f)(i).

⁴⁴ *Id.* at s. 8-11(f)(ii).

⁴⁵ Broward County, *supra* note 49.

⁴⁶ *Id.* and See Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

⁴⁷ City of Boca Raton. Ordinance 5589, available at: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Mar. 19, 2023).

⁴⁸ As they are defined in s. 627.706, F.S.

⁴⁹ “Coastline” has the same meaning as in the Submerged Lands Act, 43 U.S.C. ss. 1301 et seq.

Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium or cooperative by certified mail, return receipt requested. Within 180 days after receiving such written notice, the condominium or cooperative must complete phase one of the milestone inspection. Completion of phase one of the milestone inspection means the **licensed engineer or architect** who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

A milestone inspection consists of two phases.

For phase one of the milestone inspection, a licensed architect or engineer must perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration⁵⁰ to any building components under visual examination, phase two of the inspection is not required.

Phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure.

The bill requires that upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium or cooperative, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

- Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.
- Indicate the manner and type of inspection forming the basis for the inspection report.
- Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.
- State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.
- Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.
- Identify and describe any items requiring further inspection.

The condominium or cooperative must:

- distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission;

⁵⁰ "Substantial structural deterioration" means substantial structural distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

- post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and
- publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

A local enforcement agency may prescribe timelines and penalties with respect to compliance.

If a condominium or cooperative is required to have a milestone inspection, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners.

Milestone Inspections – Effect of the Bill

The bill allows milestone inspection services to be provided by a team of professionals that includes architect or engineer as long as such professional is responsible for all work, and such professional signs and seals the report for the inspection.

The bill requires every owner or owners complete a milestone inspection for each building that is three stories or more in height as determined by the Florida Building Code and that is subject, in whole or in part, to the condominium or cooperative form of ownership as a residential condominium association or a residential cooperative by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.

The bill provides the following milestone inspection deadlines:

- 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.
- If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025.
- If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy is the date of occupancy evidenced in any record of the local building official.

The bill allows the local enforcement agency to determine that local circumstances, including environmental conditions such as proximity to salt water as defined in s. 379.101, F.S.,⁵¹ require that a milestone inspection must be performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.

The bill allows a local enforcement agency to extend the deadline for a building's initial milestone inspection upon a showing of good cause by the owner or owners of a building has entered into a contract for the performance of the milestone inspection but that the inspection cannot reasonably be completed before the deadline, or that other circumstances exist to justify an extension.

The bill allows a local enforcement agency to accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and inspection report substantially comply with the requirements for a

⁵¹ "Salt water," except where otherwise provided by law, is all of the territorial waters of Florida excluding all lakes, rivers, canals, and other waterways of Florida from such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable because of the saline content, or from such point or points as may be fixed for conservation purposes by the Department of Environmental Protection and the Fish and Wildlife Conservation Commission, with the consent and advice of the board of county commissioners of the county or counties to be affected.

milestone inspection. If such an inspection report is accepted by the local enforcement agency it is deemed a milestone inspection for the applicable requirements in condominium and cooperative law. If a previous inspection and report is accepted by the local enforcement agency, the deadline for the building's subsequent 10-year milestone inspection is based on the date of the previously accepted inspection report.

The bill requires the milestone inspection report to be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. Such association and owner are each responsible for ensuring compliance with milestone inspection requirements. Such association and owner is responsible for all costs associated with the milestone inspection. The association is responsible for all costs associated with the milestone inspection for the portions of the building which the association is responsible for maintaining under the governing documents of the association.

The bill requires a condominium or cooperative association to notify the unit owners of a required milestone inspection and provide the date that the milestone inspection must be completed within 14 days after receipt of the written notice from the local enforcement agency. Such notice may be given by electronic submission to unit owners who consent to receive notice by electronic submission or by posting on the association's website. Phase one of the milestone inspection must be completed within 180 days after the owner of the building receives such written notice.

If a phase two inspection is required, the bill requires the architect or engineer performing the phase two inspection to submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection within 180 days after submitting a phase one inspection report.

The bill requires a condominium or cooperative association to distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, within 45 days after receipt of the inspector-prepared summary of the milestone inspection report from any phase one or phase two milestone inspection.

The bill clarifies that a governing body of a municipality may adopt an ordinance related to timeframes for phase two inspection reports.

The bill requires, by December 31, 2024, the Building Commission to establish a building safety program for the implementation of milestone inspection requirements within the Building Code: Existing Building. The program must, at minimum, include inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority.

The bill allows associations to use a SIRS visual inspection report in place of a phase one milestone inspection report if the report was performed within the past 5 years and meets the phase one milestone inspection report requirements.

The bill removes a provision requiring a report from the Building Commission by a certain date because such report has been completed.

The bill makes clarifying changes.

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:⁵² physical analysis and financial analysis.

In Florida law, "structural integrity reserve study" (SIRS) means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed by a **licensed engineer or an architect**.

At a minimum, a SIRS must:

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

A condominium or cooperative must have a SIRS completed at least every 10 years after the condominium's or cooperative's creation for each building on the condominium or cooperative property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building (SIRS items):

- Roof.
- Load-bearing walls or other primary structural members.
- Floor.

⁵² Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, <https://cedarmanagementgroup.com/hoa-reserve-study-community/#what> (last visited Mar. 19, 2023); 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 Mar. 19, 2023).

- 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 portion of the structural integrity reserve study.

Before a developer turns over control of an association to unit owners other than the developer, the developer must have a SIRS completed for each building on the condominium or cooperative property that is three stories or higher in height.

Condominium or cooperative associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a SIRS completed by December 31, 2024, for each building on the condominium or cooperative property that is three stories or higher in height.

If a condominium or cooperative association fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.

Reserves

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).⁵³

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.⁵⁴

The amount of funds that must be 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.

Current law also 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 \$10,000.⁵⁵ There are two methods of calculating these 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.⁵⁶

⁵³ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

⁵⁴ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

⁵⁵ *Id.*

⁵⁶ *Id.*; Rules 61B-22.005(3), and 61B-76.005(1), F.A.C.

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.⁵⁷

Waiver of Reserves

Effective December 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 SIRS 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.

For other reserve items, associations may 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.⁵⁸ 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.⁵⁹

Structural Integrity Reserve Study – Effect of the Bill

The bill allows the visual inspection portion of the SIRS to be performed by a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts (CAIPRA), in addition to professional engineers and architects.

The bill clarifies that only if a residential association is required to complete a structural integrity reserve study for SIRS items that the association is responsible for pursuant to the declaration, is that association's reserve account required to include such SIRS items.

The bill allows a SIRS, for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined or with an estimated remaining useful life of greater than 25 years, to recommend:

- That reserves do not need to be maintained, or
- A deferred maintenance expense amount for such item.

The bill also clarifies that, with respect to such items, reserves are not required for replacement costs, but an association must reserve the amount of deferred maintenance expense, if any, recommended by the SIRS.

The bill requires, at a minimum, a SIRS to:

- Identify each item of the condominium property being visually inspected,
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and
- Provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item.

⁵⁷ Rules 61B-22.005(1), (3), and 61B-76.005(1), (3), F.A.C.

⁵⁸ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.; Rules 61B-22.005(8), and 61B-76.005(8), F.A.C.

⁵⁹ Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

The bill adds “primary structural systems”⁶⁰ and “exterior doors” to, and removes “floor” and “foundation” from, the list of SIRS items.

The bill clarifies the timeline to complete a SIRS. The bill requires all associations that are controlled by unit owners other than the developer to have a SIRS completed for a budget adopted on or after December 31, 2024, for each building on the condominium property that is three stories or higher in height. The bill allows associations that are required to complete a milestone inspection on or before December 31, 2026 to complete the SIRS simultaneously with the milestone inspection. However, in no event may the SIRS be completed after December 31, 2026.

The bill allows associations to use a milestone inspection report or an inspection report completed for a similar local requirement in place of a SIRS visual inspection report if the report was performed within the past 5 years and meets the SIRS requirements.

The bill allows associations operating a multicondominium to provide no reserves or less reserves than required by the SIRS if such multicondominium uses an alternative funding method approved by the division. The bill defines “alternative funding method” as “a method approved by the Division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.” This provision is not applicable to cooperatives.

The bill clarifies the applicability of the SIRS requirements to each building that is three stories or higher in height as determined by the Building Code in a residential condominium or cooperative. The SIRS requirements do not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

The bill provides that if the officers or directors of an association **willfully and knowingly** fail to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.

The bill allows the members of a unit-owner-controlled association to determine, by a majority vote of the **total voting interests** at a duly called meeting of the association, to provide no reserves or less reserves for non-SIRS items.

Maintenance of Common Elements – Current Situation

For condominiums, maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements are maintained by those entitled to use the limited common elements or that the association must provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements.

If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration must describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may issue assessments to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

There is currently no similar provision for cooperatives.

Maintenance of Common Elements – Effect of the Bill

⁶⁰ As it is defined in s. 627.706, F.S.; relating to sinkhole insurance; catastrophic ground cover collapse.

The bill matches the condominium requirements for cooperatives and provides an exception for the responsibility to maintain common elements by the association.

The bill allows maintenance responsibility for limited common elements to be assigned to the unit owner by the declaration. The association must provide for the maintenance, repair, and replacement of the condominium property for which it bears responsibility pursuant to the declaration.

After turnover of control of the association to the unit owners, the bill requires the association to perform any required maintenance identified by the developer pursuant to turnover documents until the association obtains new maintenance protocols from a licensed professional engineer or architect or a person certified as a reserve specialist or professional reserve analyst by the CAIAPRA.

Developer and Non-developer Disclosures Prior to Sale – Current Situation

Developers and non-developer 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, including a copy of the inspector prepared summary of the milestone inspection report, and a copy of the most recent SIRS or a statement that the association has not completed a SIRS.⁶¹

A developer may not close for 15 days following the execution of a purchase contract or certain lease contracts, or the delivery of the required documents to the buyer, including the documents creating the association, the bylaws, and the estimated operating budget of the association. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.⁶²

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 which 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.

The prospectus or offering circular must contain certain information about the condominium or cooperative, including an estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses.⁶³

Developer and Non-developer Disclosures Prior to Sale – Effect of the Bill

In lieu of providing the summary of a milestone inspection, the bill bifurcates such requirement and requires a developer to deliver to the association a two-part turnover inspection. Specifically, the developer must transfer the following turnover inspection report to the association, notwithstanding when the certificate of occupancy was issued or the height of the building:

- A turnover inspection included in the official records, under seal of an architect or engineer or a person certified as a reserve specialist or professional reserve analyst by the CAIAPRA, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:
 - Roof.

⁶¹ Ss. 718.503(1) and 719.503(1), F.S.

⁶² Ss. 718.503(1) and 719.503(1), F.S., providing the developer disclosures before the sale or lease of a residential condominium or cooperative unit, respectively.

⁶³ See ss. 718.504(21) and 719.504(20) and (21), F.S., requiring certain budget information for the condominium or cooperative be included in the prospectus or offering circular, respectively.

- Structure, including load-bearing walls and primary structural members and primary structural systems.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.
- Waterproofing and exterior painting.
- Windows and exterior doors.
- A turnover inspection report included in the official records, under seal of an architect or engineer or a person certified as a reserve specialist or professional reserve analyst by the CAIAPRA, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:
 - Elevators.
 - Heating and cooling systems.
 - Swimming pool or spa and equipment.
 - Seawalls.
 - Pavement and parking areas.
 - Drainage systems.
 - Irrigation systems.

The bill requires the following disclosures relating to milestone inspections, turnover inspections, and SIRS requirements in developer and non-developer sales contracts entered into after December 31, 2024, for the sale of a residential unit:

- If the association is required to have a milestone inspection, turnover inspection, or a SIRS, and the association has not completed such, each contract must contain in conspicuous type a statement indicating that the association is required to have a milestone inspection, turnover inspection, or a SIRS and the association has failed to complete such inspection or study, as applicable.
- If the association is not required to have a milestone inspection or a SIRS, each contract must contain in conspicuous type a statement indicating such.
- If the association is required to have a milestone inspection, turnover inspection, or a SIRS and the association has completed such inspection or study, each contract must contain a copy of the most recent milestone inspection report, turnover inspection report, or structural integrity reserve study, as applicable.

The bill also provides boilerplate language which must be included related to the acknowledgment of receipt of such documents and option of voidability.

The bill provides that a contract that does not conform to such requirements is voidable at the option of the purchaser prior to closing.

The bill makes conforming changes.

Official Records – Current Situation

Florida law specifies the official records that condominium and cooperative associations must maintain.⁶⁴ Generally, the official records must be maintained in Florida for at least seven years.⁶⁵ Certain of these records must be accessible to the members of an association.⁶⁶ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.⁶⁷

⁶⁴ See ss. 718.111(12) and 719.104(2), F.S., relating to condominium and cooperative associations, respectively.

⁶⁵ See ss. 718.111(12)(b) and 719.104(2)(b), F.S., relating to condominium and cooperative associations, respectively.

⁶⁶ See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

⁶⁷ See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

SB 4-D gave unit owners in condominium and cooperative associations the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety of such buildings. SB 4-D also gave renters the right to inspect the milestone inspection reports.⁶⁸

A condominium association with 150 or more units is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device.⁶⁹ Cooperative associations are not required to maintain such a website.

Official Records – Effect of the Bill

The bill clarifies that any association member and any person authorized by the association member as a representative may inspect the official records of the association. The association does not have the right to choose which party, the member or their representative, has the right to inspect the official records of the association.

Enforcement – 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.⁷⁰

For cooperative associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Cooperative Act.⁷¹

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:⁷²

- 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.⁷³

⁶⁸ *Id.*

⁶⁹ S. 718.111(12)(g), F.S.

⁷⁰ S. 718.501(1), F.S.

⁷¹ S. 719.504(1), F.S.

⁷² Ss. 718.501(1)(d), (m), and 719.501(1)(d), (m), F.S.

⁷³ Ss. 718.501(1)(c) and 719.501(1)(c), F.S.

The Division has authority to investigate condominium and cooperative complaints related to the procedural completion of milestone structural inspections and structural integrity reserve studies.

Alternative Dispute Resolution

There is an alternative dispute resolution process for certain disputes between unit owners and condominium or cooperative associations. Before the institution of court litigation, a party to certain disputes must either petition the division for nonbinding arbitration or initiate pre-suit mediation.⁷⁴ Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.⁷⁵

Alternative dispute resolution is required for any disagreements between two or more parties that involves:⁷⁶

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;⁷⁷
- The board of directors' failure to:
 - Properly conduct elections;
 - Give adequate notice of meetings;
 - Properly conduct meetings;
 - Provide access to association books and records; and
- A plan of termination.

The Division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:⁷⁸

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for pre-suit mediation and must be arbitrated by the Division or filed directly with a court of competent jurisdiction.⁷⁹

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,⁸⁰ or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.⁸¹

The filing fee for a petition to the Division to initiate nonbinding arbitration or pre-suit mediation is \$50.⁸² The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

⁷⁴ S. 718.1255, 719.1255, and 719.106(1)(f), F.S.

⁷⁵ S. 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

⁷⁶ S. 718.1255(1)(a), F.S., defining the term "dispute."

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ S. 718.1255(5), F.S.

⁸⁰ S. 718.1255(4)(a), F.S.

⁸¹ S. 718.1255(4)(k), F.S.

⁸² S. 718.1255(4)(a), F.S.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center.⁸³

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' association disputes. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁸⁴

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁸⁵

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.⁸⁶

Enforcement – Effect of the Bill

The bill redefines the term “dispute” to permit unit owners in condominium and cooperative associations to utilize the mediation process in s. 720.311, F.S., related to disputes in homeowners' associations.

Under the bill, condominium and cooperative unit owners may use the mediation process for disputes related to failure of a board of administration to:

- Obtain a milestone inspection.
- Obtain a structural integrity reserve study.
- Fund reserve accounts as required for a SIRS item.
- Make or provide necessary maintenance or repairs of the condominium property as recommended by a milestone inspection or a structural integrity reserve study.

Condominium Flood Coverage Requirements – Current Situation

Until December 2022, Citizens Property Insurance Corporation (Citizens) could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming the following:

- That Citizens does not provide flood insurance coverage, and
- That, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk is not covered for flood damage.⁸⁷

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.⁸⁸

⁸³ S. 718.1255(2), F.S.

⁸⁴ *Id.*

⁸⁵ S. 720.311(2)(b), F.S.

⁸⁶ Ss. 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

⁸⁷ S. 627.351(6)(aa), F.S. (2021).

⁸⁸ Current NFIP personal lines flood policies have limits of \$250,000 per claim.

In December 2022, the Legislature established a requirement that Citizens personal lines residential policyholders and applicants must purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

The requirement to purchase is being phased in as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
 - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
 - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
 - January 1, 2024, for property valued at \$600,000 or more.
 - January 1, 2025, for property valued at \$500,000 or more.
 - January 1, 2026, for property valued at \$400,000 or more.
 - January 1, 2027, for all other personal lines residential property insured by Citizens.

A Citizens policyholder who does not obtain flood coverage and has executed such a form, and who makes a claim for water damage against Citizens, has the burden of proving the damage was not caused by flooding.⁸⁹ Additionally, Citizens may deny coverage to a policyholder or applicant who refuses to execute the form.⁹⁰

Condominium Flood Coverage Requirements – Effect of the Bill

The bill provides that the following policyholders are not required to purchase flood insurance as a condition for maintaining Citizens policies:

- Those with policies that do not provide coverage for the peril of wind.
- Those with policies that provide coverage under a condominium unit owners form.

Appropriation

The bill provides, for the 2023-2024 fiscal year, the sums of \$1,301,928 in recurring funds and \$67,193 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and 10 full-time equivalent positions with associated salary rate of 487,264 are authorized for the purpose of implementing the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁸⁹ S. 627.351(6)(aa), F.S. (2022).

⁹⁰ *Id.*

None.

2. Expenditures:

The bill provides, for the 2023-2024 fiscal year, the sums of \$1,301,928 in recurring funds and \$67,193 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and 10 full-time equivalent positions with associated salary rate of 487,264 are authorized for the purpose of implementing the bill.

DBPR may incur an insignificant indeterminant increase in expenditures related to creating a building safety and inspection program and possible increased complaints related to milestone inspection and SIRS requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Condominium and cooperative associations and unit owners in those communities may incur expenses related to the required conduct of a milestone inspection and reserve study. However, the associations and unit owners may benefit from the long-term financial planning benefits of a reserve study and from the maintenance or repair of association property.

Providers of reserve studies, architects, and engineers who offer milestone inspections and SIRS may benefit from additional business due to the required milestone inspections and reserve studies.

The bill will reduce the number of individual condominium unit owners who have to purchase additional flood insurance coverage when the requirement becomes effective.

D. FISCAL COMMENTS:

Fannie Mae⁹¹ and the Federal Housing Administration⁹² have altered their requirements for loans secured by condominiums and cooperatives in response to the Champlain Towers collapse, including requiring:

- The association to have assessments sufficient to fund any repairs; and
- That at least 10 percent of the association's assessments are dedicated to budget reserves.

Fannie Mae also provides that condominiums and cooperatives with significant deferred maintenance or that have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase until the repairs are made.⁹³

⁹¹ Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Mar. 19, 2023).

⁹² Freddie Mac, *Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval*, sec. II.C.2.vi., p. 530, available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.lhsg-102021.pdf> (last visited Mar. 19, 2023).

⁹³ Fannie Mae, *supra* note 91.

Prior to the Champlain Towers South collapse, Freddie Mac adopted an underwriting standard requiring that at least 10 percent of a condominium association's assessments be dedicated to budget reserves.⁹⁴

⁹⁴ Freddie Mac, Established Condominium Projects, Effective June 1, 2022, available at: <https://guide.freddie.mac.com/app/guide/section/5701.5> (last visited Mar. 19, 2023).