

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: SPB 7042

INTRODUCER: Regulated Industries Committee

SUBJECT: Community Association Building Safety

DATE: February 2, 2022

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	_____	<b>RI Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SPB 7042 establishes a mandatory milestone inspection program for residential condominium and cooperative buildings. A milestone inspection is defined by the bill as a structural inspection of a building by a Florida-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.

Under the bill, residential condominium and cooperative buildings that are three stories or more in height feet to have a milestone inspection once the building reaches 30 years in age, and every 10 years thereafter. If the building is within three miles of coastline, the milestone inspection must be conducted when the building reaches 20 years of age, and every 7 years thereafter. Inspections must be done by a licensed architect or engineer. The bill provides a two-phase milestone inspection process consisting of a phase-one visual inspection and a phase-two structural inspection, which may involve more intensive destructive and nondestructive testing, if the phase-one visual inspection identifies structural distress. Local governments may prescribe timelines and penalties with respect to compliance.

Upon completion of the milestone inspections, the:

- Architect or engineer who conducts the inspection must submit a sealed copy of the inspection report to the local building official and the board of administration for the condominium and cooperative association; and
- Board must distribute a copy of the inspection report to each unit owner.

The bill revises the maintenance obligations for condominium and cooperative associations, to provide that:

- The association shall provide for the maintenance, repair, and replacement of specified association property;

- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

The bill requires condominium and cooperative associations with a residential building that is three stories or more in height to conduct a reserve study at least once every three years, and specifies the matters that must be considered in the reserve study. The board must annually review the results of the reserve study and make any necessary adjustments.

The bill revises the requirements for the funding of reserves, by:

- Permitting associations to satisfy their reserves funding obligations by using an alternative funding method;
- Requiring associations to incorporate the findings and recommendations of the reserve study into the association's annual budget;
- Requiring reserve funds that are used for other than authorized reserve expenditures to be reinstated in the reserve account or accounts within 12 months of the expenditure;
- Permitting pooled reserve accounts if the funding for the maintenance, repair, or replacement of specified association property is not pooled with other expenses; and
- Authorizing the board to adopt a special assessment or borrow money without unit owner voting or approval for the necessary maintenance, repair, or replacement of association property, notwithstanding any provision in the declaration requiring prohibiting or limiting such authority.

The bill permits an association or a developer to waive reserves if:

- The association's reserve obligations are funded consistent with the reserve study currently in effect; or
- The association provides an alternative funding mechanism for the association's reserve obligations.

The bill expands unit owner access to records, and provides additional disclosures relating to the funding of reserves by:

- Adding reserve studies and inspection reports to the list of official records of the association to which unit owners have the right inspect and copy;
- Adding the reserve study and inspection reports to the list of documents a condominium association of 150 or more units must make available on a website or through a mobile device application;
- Providing specific disclosures to unit owners in the annual budget as to any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect;
- Revising the estoppel certificate requirements to include a disclosure to prospective purchasers of a unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect;

- Requiring, if the association has failed to fund reserves as required, a disclosure stating that the board of administration has failed to fund reserves as required by law;
- Requiring developer and nondeveloper unit owners to provide copies of the milestone inspection report, if inspection was required, and the reserve study to prospective buyers of the unit.
- Requiring unit developer and nondeveloper unit owners to give prospective buyers of a unit a copy of the most recent reserve study and milestone inspection report before the applicable voidability period; and
- Providing specific disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect.

The bill permits homeowners in condominium and cooperative associations to petition the division to arbitrate or mediate disputes related to failure of a governing body to perform a structural or life safety inspection, including the milestone inspection, perform a reserve study, fund reserves, or make or provide necessary maintenance or repairs of association property

The bill takes effect July 1, 2022.

## **II. Present Situation:**

### **Community Associations**

#### ***Chapters 718, 719, and 720, F.S.***

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,<sup>1</sup> recordkeeping requirements, including which records are accessible to the members of the association,<sup>2</sup> and financial reporting.<sup>3</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

#### ***Division of Florida Condominiums, Timeshares, and Mobile Homes***

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., for associations that are still under developer control.<sup>4</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the

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<sup>1</sup> See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>2</sup> See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>3</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

<sup>4</sup> Sections 718.501(1) and 719.501(1), F.S.

association.<sup>5</sup> After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.<sup>6</sup> For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>7</sup>

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.<sup>8</sup>

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.<sup>9</sup>

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.<sup>10</sup>

### ***Condominiums***

A condominium is a "form of ownership of real property created under ch. 718, F.S.,"<sup>11</sup> the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.<sup>12</sup> For unit owners, membership in the association is an unalienable right and required condition of unit ownership.<sup>13</sup>

A condominium association is administered by a board of directors referred to as a "board of administration."<sup>14</sup> The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represents the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.<sup>15</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Section 718.501(1), F.S.

<sup>7</sup> Section 719.501(1), F.S.

<sup>8</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *See s. 720.306(9)(c), F.S.*

<sup>11</sup> Section 718.103(11), F.S.

<sup>12</sup> *See s. 718.103, F.S., for the terms used in the Condominium Act.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 718.103(4), F.S.

<sup>15</sup> Section 718.103(2), F.S.

There are 1,529,764 condominium units in Florida operated by 27,588 associations.<sup>16</sup> Approximately 912,376 of these condominium units in Florida are at least 30 years in age.<sup>17</sup> Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.<sup>18</sup>

It is estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.<sup>19</sup>

### *Cooperatives*

Section 719.103(12), F.S., defines a “cooperative” to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.<sup>20</sup> The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.<sup>21</sup> There are 778 cooperative associations in Florida that are registered with the DBPR.<sup>22</sup>

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<sup>16</sup> Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), 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).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

<sup>21</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>22</sup> See Task Force Report, pp. 4-5.

### ***Official Records – Condominium and Cooperative Associations***

Florida law specifies the official records that condominium and cooperative associations must maintain.<sup>23</sup> Generally, the official records must be maintained in Florida for at least seven years.<sup>24</sup> Certain of these records must be accessible to the members of an association.<sup>25</sup> 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.<sup>26</sup>

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website or make such documents available through an application that can be downloaded on a mobile device.<sup>27</sup> Cooperative associations are not required to maintain such a website.

### ***Budgets and Reserves - Condominium and Cooperative Associations***

Condominium and cooperative associations must have a budget of estimated revenues and expenses.<sup>28</sup> The board must adopt the annual budget at least 14 days before the start of the association's fiscal year.<sup>29</sup>

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.<sup>30</sup>

Condominium and cooperative associations must maintain reserve funds and any interest accrued on the reserve funds in the reserve account or accounts. Reserve funds may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of unit owners at a duly called meeting of the association.<sup>31</sup>

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<sup>23</sup> See ss. 718.111(12) and 719.104(2), F.S., relating to condominium and cooperative associations, respectively.

<sup>24</sup> See ss. 718.111(12)(b) and 719.104(2)(b), F.S., relating to condominium and cooperative associations, respectively.

<sup>25</sup> See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

<sup>26</sup> See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

<sup>27</sup> Section 718.111(12)(g), F.S.

<sup>28</sup> Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to the annual budget for condominium and cooperative associations, respectively.

<sup>29</sup> *Id.*

<sup>30</sup> Sections 718.112(2)(f)2.a. and 719.106(1)(j)2., F.S., relating to condominium and cooperative associations, respectively.

<sup>31</sup> Sections 718.112(2)(f)3. and 719.106(1)(j)3., F.S., relating to condominium and cooperative associations, respectively.

Condominium and cooperative associations, and their developers, may vote to not fund reserves, i.e., waive reserves, or to provide reserves less adequate than required.<sup>32</sup>

### ***Reserve Studies***

A reserve study determines how much an association needs to collect in annual reserve contributions for the board to afford capital projects when they are needed. A reserve study includes a physical inspection of the association's property and a financial analysis of the association's current reserves, payments by unit or homeowners into the association's reserve account, and anticipated future expenditures, thus allowing the community to pay for capital projects as they become necessary.<sup>33</sup> Nine states require a reserve study or a reserve schedule for condominium associations.<sup>34</sup>

Current law does not require condominium and cooperative associations in Florida to conduct a reserve study.

### ***Financial Reporting - Condominium and Cooperative Associations***

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide comparable financial reporting requirements for condominium and cooperative associations, respectively.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The division must adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations.<sup>35</sup> For condominium associations, the division's rulemaking authority is broader; the division must adopt rules setting forth uniform accounting principles and standards to be used by all condominium associations and addressing the financial reporting requirements for multicondominium associations. For condominium associations, the division's rules must include, but not be limited to:

...standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting

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<sup>32</sup> *Id.*

<sup>33</sup> See Community Association Institute, *Understanding and Utilizing Your Reserve Study to Ensure Long-Term Success*, at: <https://www.caicd.org/understanding-and-utilizing-your-reserve-study-to-ensure-long-term-success/> (last visited Jan. 29, 2022).

<sup>34</sup> See Community Association Institute, *Reserve Requirements and Funding*, at: <https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx> (last visited Jan. 29, 2020). The nine states are: California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington State.

<sup>35</sup> Section 719.104(4)(a), F.S.

such rules, the division shall consider the number of members and annual revenues of an association.

***Estoppel Certificates - - Condominium and Cooperative Associations***

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, a purchaser may request that the seller of a unit provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit owner as of a specified date.<sup>36</sup>

Within 10 days after receiving a written or electronic request for an estoppel certificate, the association must provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit. An estoppel certificate must be delivered by hand, mail, or e-mail to the requestor on the date of issuance. A certificate that is hand delivered or sent by electronic means has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.<sup>37</sup>

The estoppel certificate must include certain information regarding the unit and the association, including any fees or moneys due to the association and the amount of any fees due; a list of all assessments, special assessments, or other amounts due; and information regarding rules or regulations affecting the transfer of the unit. The association, at its option, may also include additional information in the estoppel certificate.<sup>38</sup>

***Developer Turnover Report - Condominium and Cooperative Associations***

In a condominium or cooperative association, when the unit owners other than the developer are entitled to elect the majority of the board for the association, the developer must relinquish control of the association to the unit owners other than the developer. The developer of a condominium or cooperative is required to give certain items to the association when this change of control occurs.<sup>39</sup>

In a condominium association, the developer must give the association a turnover inspection report which is included in the official records, under seal of an architect or engineer authorized to practice in Florida, that attests to required maintenance, useful life, and replacement costs of the following applicable common elements:<sup>40</sup>

- Roof.
- Structure.
- Fireproofing and fire protection systems.
- Elevators.
- Heating and cooling systems.

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<sup>36</sup> Sections 718.116(8) and 719.108(6), F.S., relating to estoppel certificate requirements for condominium and cooperative associations, respectively.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Sections 718.301 and 719.301, F.S., relating to the transfer of association control for condominium and cooperative associations, respectively.

<sup>40</sup> Section 718.301(4)(p), F.S.



- Plumbing.
- Electrical systems.
- Swimming pool or spa and equipment.
- Seawalls.
- Pavement and parking areas.
- Drainage systems.
- Painting.
- Irrigation systems.

The developer of a cooperative is not required to provide a turnover inspection report.

### ***Pre-sale Disclosures - Condominium and Cooperative Associations***

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.<sup>41</sup>

The developer may not close for 15 days following the execution of a purchase contract, or execution of a lease of a residential unit for an unexpired term of more than five years, and 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.<sup>42</sup>

A nondeveloper unit owner must provide the prospective buyer or lessee certain information, including the articles of incorporation, bylaws and rules, a copy of the most recent financial information, and a “Frequently Asked Questions and Answers” document.<sup>43</sup> 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.<sup>44</sup>

Each contract for sale of a residential unit must contain in conspicuous type a statement acknowledging that the purchaser has received the document and his or her right to void the contract if the required documents are not provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract.

### ***Prospectus or Offering Circular - Condominium and Cooperative Associations***

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

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<sup>41</sup> Sections 718.503 and 719.503, F.S.

<sup>42</sup> Sections 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.

<sup>43</sup> See ss. 718.503(2) and 719.503(2), F.S., providing the nondeveloper disclosures before the sale of a residential condominium or cooperative unit, respectively.

<sup>44</sup> *Id.*

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.<sup>45</sup>

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.<sup>46</sup>

### ***Alternative Dispute Resolution - Condominium and Cooperative Associations***

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. Before the institution of court litigation, other than an election or recall dispute, a party to a dispute must either petition the division for nonbinding arbitration or initiate presuit mediation.

Disputes in cooperative associations, including recall election disputes, are subject to the same alternative dispute resolution requirements and procedures applicable to condominiums set forth in s. 718.1255, F.S.<sup>47</sup>

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.<sup>48</sup>

Alternative dispute resolution is required for any disagreements between two or more parties that involves:<sup>49</sup>

- 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;<sup>50</sup>
- 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 pursuant to s. 718.117, F.S.

The division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:<sup>51</sup>

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;

<sup>45</sup> Sections 718.504 and 719.504, F.S., requiring a prospectus or offering circular for a residential condominium or cooperative unit, respectively.

<sup>46</sup> 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.

<sup>47</sup> Sections 719.1255 and 719.106(1)(f), F.S.

<sup>48</sup> Section 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

<sup>49</sup> Section 718.1255(1)(a), F.S., defining the term "dispute."

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

- 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 presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.<sup>52</sup>

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,<sup>53</sup> 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.<sup>54</sup>

The filing fee for a petition to the division to initiate nonbinding arbitration or presuit mediation is \$50.<sup>55</sup>

The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.<sup>56</sup>

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.<sup>57</sup>

## **Building Safety**

### ***The Florida Building Code***

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that 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.<sup>58</sup>

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

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<sup>52</sup> Section 718.1255(5), F.S.

<sup>53</sup> Section 718.1255(4)(a), F.S.

<sup>54</sup> Section 718.1255(4)(k), F.S.

<sup>55</sup> Section 718.1255(4)(a), F.S.

<sup>56</sup> Section 718.1255(2), F.S.

<sup>57</sup> Section 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

<sup>58</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, at [http://www.floridabuilding.org/fbc/publications/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf) (last visited Jan. 26, 2021).

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.<sup>59</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code (Building Code).<sup>60</sup>

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.<sup>61</sup>

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.<sup>62</sup> The commission reviews several International Codes published by the International Code Council,<sup>63</sup> 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.<sup>64</sup>

### ***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.<sup>65</sup> Every local government must enforce the Building Code and issue building permits.<sup>66</sup> 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.<sup>67</sup>

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.<sup>68</sup> Construction work may not be done

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<sup>59</sup> *Id.*; see also DBPR, *Building Code Information System*, at: <https://floridabuilding.org/c/default.aspx#> (last visited Jan. 26, 2022).

<sup>60</sup> *Id.*

<sup>61</sup> Section 553.72(1), F.S.

<sup>62</sup> Section 553.74, F.S.

<sup>63</sup> 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*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Jan. 26, 2022).

<sup>64</sup> Sections 553.73(7), F.S.

<sup>65</sup> Section 553.72, F.S.

<sup>66</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>67</sup> Sections 125.56(4)(a) and 553.79(1), F.S.

<sup>68</sup> 2020 Florida Building Code (7th ed.), s. 110.

beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.<sup>69</sup>

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. However, local governments are empowered to enact such requirements at their discretion to apply throughout a local jurisdiction. 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.<sup>70</sup>

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.<sup>71</sup> 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.<sup>72</sup> This provision was repealed in 2010.<sup>73</sup>

### ***Building Code Administrators and Inspectors and Plans Examiners***

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the DBPR. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.<sup>74</sup>

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.<sup>75</sup>

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:<sup>76</sup>

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;

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<sup>69</sup> 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 Jan. 26, 2022).

<sup>70</sup> See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 2 (Jan. 7, 2022) (on file with the Senate Committee on Regulated Industries).

<sup>71</sup> Ch. 2008-28, Laws of Fla.

<sup>72</sup> *Id.*

<sup>73</sup> Ch. 2010-176, s. 59, Laws of Fla.

<sup>74</sup> Section 468.605, F.S.

<sup>75</sup> Section 468.603(2), F.S.

<sup>76</sup> Section 468.603(5), F.S.

- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories in which the plans examiner has been licensed. The plans examiner categories are:<sup>77</sup>

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

### ***Threshold Building Inspections***

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.”<sup>78</sup> In response to this tragedy, the Legislature instituted threshold building inspections, requiring licensed “special inspectors” to conduct inspections for all threshold buildings.<sup>79</sup> A special inspector is a licensed architect or registered engineer who is certified under chs. 471 or 481, F.S., to conduct inspections of threshold buildings.<sup>80</sup>

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.<sup>81</sup> 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.<sup>82</sup>

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.<sup>83</sup>

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<sup>77</sup> Section 468.603(8), F.S.

<sup>78</sup> 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 Jan. 26, 2022).

<sup>79</sup> 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](https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf) (last visited Jan. 26, 2022).

<sup>80</sup> See s. 553.71, F.S.

<sup>81</sup> *Id.*

<sup>82</sup> Section 553.79(5)(a), F.S.

<sup>83</sup> *Id.*

However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.<sup>84</sup>

The inspection plan for a threshold building provides specific inspection instructions to provide for the adequate inspection of the 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.<sup>85</sup> Special inspectors report directly to local building administrators and officials. The role of threshold building inspectors is unique to Florida.<sup>86</sup>

There were 8,515 active Building Code Administrators/Inspectors licensed in Florida in Fiscal Year 2020-2021.<sup>87</sup>

### ***Local Building Recertification Programs***

Florida does not require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country. Miami-Dade and Broward Counties have amended their local building codes requiring a recertification process and inspection of buildings 40 years and older. Miami-Dade's program was established in the 1970s, and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.<sup>88</sup>

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 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

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Jan. 26, 2022).

<sup>87</sup> Department of Business and Professional Regulation, *2020-2021 Annual Report, Division of Certified Public Accounting, Division of Professions, Division of Real Estate, Division of Regulation* at p. 20, at [http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport\\_FY2021.pdf](http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf) (last visited Jan. 27, 2022).

<sup>88</sup> Broward County, Building Safety Inspection Program, available at <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 26, 2022).

minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.<sup>89</sup>

Inspection procedures shall “conform, in general, with 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.<sup>90</sup> Miami-Dade’s recertification program exempts buildings under 2,000 square feet,<sup>91</sup> and Broward’s program exempts buildings under 3,500 square feet.<sup>92</sup> The inspections must be carried out by a professional engineer or architect registered with the State of Florida.<sup>93</sup>

Following the 2021 tragedy in Surfside, Florida, where a 12-story condominium building, known as Champlain Towers South, unexpectedly experienced structural failure and partially collapsed, resulting in the death of 98 people, 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.<sup>94</sup>

### ***Recommendations from Government and Private Sector Groups***

In response to the tragic loss of 98 lives suffered in the collapse of Champlain Towers South, the following local governments and industry groups organized to review current law and to make recommendations to prevent another building collapse:

- Broward County Condominium Structural Issues Committee;<sup>95</sup>
- Miami-Dade County Commission;<sup>96</sup>
- The Florida Building Commission’s Hurricane Research Advisory Committee;<sup>97</sup>
- The Florida Bar Real Property, Probate, and Trust Law Section’s Condominium Law and Policy Life Safety Advisory Task Force;<sup>98</sup>

<sup>89</sup> 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](https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH8BUCO_ARTIAD_S8-11EXBU) (last visited Jan. 26, 2022).

<sup>90</sup> *Id.* at s. 8-11(f)(i).

<sup>91</sup> *Id.* at s. 8-11(f)(ii).

<sup>92</sup> Broward County, Building Safety Inspection Program, available at:

<https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 19, 2022)

<sup>93</sup> *Id.* and See Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

<sup>94</sup> City of Boca Raton. Ordinance 5589, available at: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Jan. 21, 2022)

<sup>95</sup> Broward County Commission, *Summary Report and Recommendations of the Broward County Condominium Structural Issues Committee*, on file with the Regulated Industries Committee.

<sup>96</sup> See Miami-Dade County, *Miami-Dade County convenes a series of discussion meetings with elected leaders to pursue policy reforms in wake of Surfside tragedy*, Aug. 4, 2021, <https://www.miamidade.gov/releases/2021-08-04-mayor-surfside-meetings.asp> (last visited Jan. 30, 2022).

<sup>97</sup> Florida Building Commission, Hurricane Research Advisory Committee, August 27, 2001 Agenda, available at: [https://www.floridabuilding.org/fbc/commission/FBC\\_1021/HRAC/HRAC\\_Agenda.htm](https://www.floridabuilding.org/fbc/commission/FBC_1021/HRAC/HRAC_Agenda.htm) (last visited Jan. 30, 2022).

<sup>98</sup> The Florida Bar, *Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force*, Oct. 12, 2021, available at:

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj78tuW\\_dn1AhX5hHIEHTUFAxUQFnoECBMOAQ&url=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2021%2F10%2FCondominium-Law-](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj78tuW_dn1AhX5hHIEHTUFAxUQFnoECBMOAQ&url=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2021%2F10%2FCondominium-Law-)



- The Miami-Dade Grand Jury;<sup>99</sup> and
- The Community Associations Institute.<sup>100</sup>

The findings and recommendations from these government and private sector groups are extensive, addressing a variety of issues. The recommendations from these diverse groups are too numerous to address in this analysis. However, these groups made recommendations that may differ in the specifics but are similar in certain respects, including making recommendations for a state-wide certification program for high-rise condominiums; limiting or prohibiting the waiving of reserves by condominium associations, and requiring condominium associations to conduct reserve studies.

### III. Effect of Proposed Changes:

SPB 7042 amends provisions in chs. 718 and 719, F.S., to provide for the inspection and maintenance of condominium and cooperative buildings, the funding of necessary reserves for the maintenance and repair of such buildings, and other provisions to provide unit owners with better access to relevant information regarding building safety and their association's funding of reserves.

#### **Inspection and Maintenance of Condominium and Cooperative Property**

##### *Mandatory Milestone Inspections*

The bill creates ss. 718.1123 and 719.1062, F.S., to require all residential condominium and cooperative buildings, respectively, that are three stories or more in height to have a "milestone inspection" conducted by a licensed Florida architect or engineer.

The bill defines the term "milestone inspection: to mean:

a structural inspection of a building by a licensed architect or engineer authorized to practice in this state 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.

Under the bill, the purpose of the milestone inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code (code).

The milestone inspection must to be conducted by December 31, 2024, if the building received a certificate of occupancy on or before July 1, 1992. Buildings that are subject to the inspection

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[and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf&usg=AOvVaw2YITYoD\\_3yZbtvU0eKfYm](#) (last visited Jan. 30, 2022).

<sup>99</sup> Eleventh Judicial Circuit of Florida in and for the County of Miami-Dade, *Final Report of the Miami-Dade Grand Jury*, Dec. 15, 2021, available at: [https://miamisao.com/wp-content/uploads/2021/12/GRAND-JURY\\_202112151434-1.pdf](https://miamisao.com/wp-content/uploads/2021/12/GRAND-JURY_202112151434-1.pdf) (last visited Jan. 30, 2022).

<sup>100</sup> Community Associations Institute, *Condominium Safety Public Policy Report*, Oct. 2021, available at: <https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/CAI-Condo-Safety-Public-Policy-Report-10-21.pdf> (last visited Jan. 30, 2022).

requirement must be inspected by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy was issued, and every 10 years thereafter.

However, if the building is located within 3 miles of a coastline, it must have a milestone inspection by December 31 of the year the building reaches 20 years of the age, based on the date the certificate of occupancy was issued, and every 7 years thereafter.

The bill provides a two-phase milestone inspection process:

- A Phase One inspection is a visual inspection of the property. If no imperfections or signs of structural distress are found by the visual inspection, the architect or engineer may issue an inspection report.
- A Phase Two inspection is required if the Phase one inspection identifies any structural distress. A Phase Two inspection may involve destructive and nondestructive testing at the description of the special inspector.

A milestone inspection must be conducted by a Florida-licensed architect or engineer who conducts the inspection to submit a sealed copy of the inspection report to the condominium's board of administration upon the completion of a phase one or phase two inspection. However, the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years' experience designing structural components and five years' experience inspecting existing buildings of similar size, scope, and type of construction.

The architect, engineer, or special inspector who performs the inspection must submit a sealed copy of the inspection report to the board of administration of the association and to the building official of the local government that has jurisdiction.

The board must distribute a copy of the inspection report to each unit owner.

The bill authorizes local governments to prescribe timelines and penalties with respect to compliance.

The bill requires condominium and cooperative associations to comply with the structural and life safety standards for maintenance and inspections adopted by the Florida Building Commission.

### ***The Developer Turnover Report***

The bill amends s. 718.301(4)(p), F.S., which specifies the components of the common elements that must be included in the developer's turnover report, to:

- Include "waterproofing" among the building components that must be addressed in the turnover report; and
- Require the developer to attest to the condition of the listed components.

For the condominium turnover report, the bill changes the term “common elements”<sup>101</sup> to the broader term “association property.”<sup>102</sup>

The bill creates s. 719.301(4)(p), F.S., to provide a developer turnover report requirement for the inspection of listed components that is identical to that required for condominiums under s. 718.301(4)(p), F.S., as amended by the bill.

The bill also amends s. 719.301(4), F.S., to require developers of a cooperative to provide a reports that is identical to the one required for developers of condominiums at the turnover of control to the nondeveloper unit owners.

### ***Maintenance of Condominium Property***

The bill amends s. 718.113, F.S., which provides that maintenance of the common elements is the responsibility of the condominium association and details the maintenance obligations for condominium boards, to provide that:

- The association shall provide for the maintenance, repair, and replacement of the applicable common elements identified in s. 718.301(4)(p), F.S.;
- After turnover of control to the unit owners, the association must perform any required maintenance identified by the developer in the turnover report until the association obtains new maintenance protocols from a licensed professional engineer or architect;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

The bill creates s. 719.105(5), F.S., to provide identical obligations for maintenance of the cooperative property by the cooperative association.

In addition, the bill provides that maintenance of cooperative property is the responsibility of the association, which is identical to the provision in current law in s. 718.113(1), F.S., for condominium associations.

### **Reserves**

#### ***Reserve Studies***

The bill amends the budget reserve provisions in ss. 718.112(2)(f) and 719.106(1)(j), F.S., to:

- Require condominium and cooperative associations with a residential building that is three stories or greater to conduct a reserve study at least once every three years.
- Provide for the content of the reserve study, including estimating:

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<sup>101</sup> Section 718.103(8), F.S., defines the term “common elements” to mean “the portions of the condominium property not included in the units.”

<sup>102</sup> Section 718.103(3), F.S., defines the term “association property” to mean “that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.”

- The useful life for common elements the association is required to maintain, repair, replace, or restore;
- The applicable costs to maintain, repair, replace, or restore those common elements; and
- The total annual assessment that may be necessary to cover the cost to maintain, repair, replace, or restore those common elements.

Under the bill, the board must annually review the results of the reserve study and to make any necessary adjustments.

The reserve study requirements in the bill do not apply to condominium and cooperative associations with a building under three stories.

### ***Funding Reserves***

The bill creates a new ss. 718.103(1) and 719.103, F.S., applicable to condominium and cooperative association, respectively, to define the term “alternative funding method” to mean:

... the funding of a reserve account by other than an assessment or special assessment which may reasonably be expected to fully satisfy the association’s reserve funding obligations, including, but not limited to, an immediately available line of credit equal to the amount of any waived reserves, payments into the reserve account by a developer who is offering units, or any other method approved by the Division of Florida Condominiums, Timeshares & Mobile Homes.

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for the funding of reserves by condominium and cooperative associations, respectively, by:

- Permitting associations to satisfy their reserves funding obligations by using an alternative funding method.
- Incorporating the findings and recommendations of the reserve study into the association’s annual budget.
- Requiring reserve funds that are used for other than authorized reserve expenditures to be reinstated in the reserve account or accounts within 12 months of the expenditure.
- Permitting pooled reserve accounts if the funding for the maintenance, repair, or replacement of the association property identified in ss. 718.301(4)(p) and 719.301(4)(p), F.S., are not pooled with other expenses.

The requirements for the funding of reserves in the bill do not apply to condominium and cooperative associations with a building under three stories.

The bill amends s. 718.115(1)(a) and 719.107(1)(f), F.S., relating to the common expenses for condominium and cooperative associations, respectively, to provide that, notwithstanding any provision in the declaration requiring prohibiting or limiting a board of administration’s authority to adopt a special assessment or to borrow money on behalf of the association, including any provision in the governing documents requiring unit owner voting or approval, the board may adopt a special assessment or borrow money for the necessary maintenance, repair, or

replacement of the condominium or cooperative property identified in ss. 718.301(4)(p) and 719.301(4)(p), F.S, respectively.

### ***Waiving Reserves***

The bill also amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for waiving of reserves by a developer or association. The bill permits a developer or association to waive reserves if:

- The reserves are funded consistent with the reserve study currently in effect; or
- The association provides an alternative funding mechanism for the association's reserve obligations.

### **Transparency - Access to Records and Disclosures**

#### ***Official Records***

The amends ss. 718.111(12)(a) and 719.104(2)(a), F.S., to include reserve studies, the milestone inspection report, and any other inspection report relating to a structural or life safety inspection to the list of documents that condominium and cooperative associations, respectively, must make available for inspection or copying by members of the association.

The bill also amends s. 718.111(12)(g), F.S., which requires association of 150 or more units to make specified documents available on a website or through an application that can be downloaded on a mobile device, to include the inspection reports and reserve study among the types of documents such association must maintain on the website or application.

The bill does not provide a comparable provision requiring cooperative associations to publish these records on the internet or through a mobile device. Under current law, ch. 719, F.S., does not require cooperative associations of any size to publish specified records on a website or through a mobile devise.

#### ***Financial Report Disclosures***

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require that the financial report for the condominium and cooperative association, respectively, must include a disclosure statement in conspicuous type stating that:

- The association has voted to waive reserves or to use existing reserve funds for purposes other than purposes for which the reserves were intended; and
- The association's board has failed to fund reserves as required by law if the association fails to fund reserves consistent with the reserve study currently in effect.

#### ***Estoppel Certificates***

The bill amends the estoppel certificate provisions for condominium and cooperative associations in ss. 718.116(8) and 719.108(6), F.S., respectively, to provide specific disclosure statements in conspicuous type to prospective purchasers of a condominium or cooperative unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect. These disclosure statements are identical to

the disclosure statements required for the financial report in ss. 718.112(2)(f) and 719.106(1)(j), F.S., as amended by the bill.

#### ***Additional Pre-Sale Disclosures***

The bill amends the required presale developer and non-developer disclosures in ss. 718.503 and 719.503, F.S., for condominium and cooperative associations, respectively, to:

- Require developer unit owners to provide copies of the most recent reserve study to prospective buyers of the unit before the 15-day violability period.
- Require nondeveloper unit owners to include in the contract for sale a statement in conspicuous type to a prospective buyer that he or she has been given the most recent reserve study and the milestone inspection report, if required, before the 3-day rescission period.

The bill also amends ss. 718.504 and 719.504, F.S., to provide specific disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium or cooperative unit, respectively regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect. These disclosure statements are identical to the disclosure statements required for the financial report in ss. 718.112(2)(f) and 719.106(1)(j), F.S., as amended by the bill

#### **Homeowner Remedies:**

The bill amends the definition for the term “dispute” in s. 718.1255(1), F.S., to permit homeowners in condominium and cooperative associations to petition the division to arbitrate or mediate a disagreement between two or more parties that involves the failure of a governing body, when required by ch. 718, F.S., or an association document, to:

- Perform a structural or life safety inspection, including the milestone inspection.
- Perform a reserve study.
- Fund reserves.
- Make or provide necessary maintenance or repairs of association property.

The bill also republishes s. 719.1255, F.S., which applies the alternative dispute resolution provisions for condominium disputes to cooperative disputes to incorporate the amendment to s. 718.1255, F.S.

#### **Conforming Cross-references**

The bill amends ss. 558.002, 718.121, 718.706, and 720.3085, F.S.; to conform cross-references.

#### **Effective Date**

The bill takes effect July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, condominium and cooperative associations and unit owners in those communities may incur additional 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 continued maintenance or repair of association property.

According to the Florida Building Commission comments in the analysis for SB 1702, which provides a “milestone inspection” requirement, to that provided in this bill, the cost of these types of inspections will vary considerably based on the size of the building.<sup>103</sup> The recertification and building safety inspections currently being conducted in Miami-Dade and Broward counties can cost as much as \$20,000 to \$40,000 for the inspection of a 15 to 20 story condominium, and between \$2,000 and \$4,000 for the inspection of a small commercial building. Any remedial work to remedy issues identified during the inspection would be in addition to these costs.<sup>104</sup>

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

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<sup>103</sup> See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 7 (Jan. 7, 2022) (on file with the Senate Committee on Regulated Industries).

<sup>104</sup> *Id.*

**C. Government Sector Impact:**

Government sector fiscal impact for this bill is not available at this time, but the DBPR, including the Florida Building Commission and the division, may incur costs to implement the provisions of this bill, including costs related to the expansion in the bill of the types of disputes that qualify for arbitration or mediation by the division and the need for addition rulemaking.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Fannie Mae<sup>105</sup> and the Federal Housing Administration<sup>106</sup> have altered their requirements for loans secured by condominium 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 provides that condominium 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.<sup>107</sup>

Although the underwriting standard was adopted before the Champlain Towers South collapse, Freddie Mac also requires that at least 10 percent of a condominium association's assessments are dedicated to budget reserves.<sup>108</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 558.002, 718.121, 718.103, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.301, 718.503, 718.504, 718.706, 719.103, 719.104, 719.106, 719.107, 719.108, 719.1255, 719.301, 719.503, 719.504, and 720.3085.

This bill creates the following sections of the Florida Statutes: 718.1123 and 719.1062.

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<sup>105</sup> Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Jan. 30, 2022).

<sup>106</sup> 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/4000.1hsg-102021.pdf> (last visited Jan. 30, 2022).

<sup>107</sup> *Supra* n. 105.

<sup>108</sup> Freddie Mac, *Established Condominium Projects*, April 3, 2021, available at: <https://guide.freddiemac.com/app/guide/section/5701.5> (last visited Jan. 30, 2022).



**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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