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# As Florida Lawmakers Fail to Agree on Condo Safety After Surfside, 'the Free Market Is Acting'

"Since the legislature did not act, the free market is acting."

Despite the tragic condominium collapse in Surfside in June 2021, the Florida Legislature has still not agreed on a bill that would require more rigorous inspections for condos. So, without legislation, attorneys are taking the initiative to create their own guidelines for condominium owners worried about the possibility of future tragedies.

The proposed legislation, SB 1702, would have required condominiums to conduct studies so engineers can tell condo boards how much money they'll need to set aside for repairs. The proposed bill would also have required recertification inspections on old buildings. Under current Florida law, older builders are not legally required to have a safety inspection.



Jim Prichard, Ball Janik's managing partner.

Jim Prichard, managing partner at construction law firm Ball Janik, said many of his Florida clients are condominium owners, and they're getting anxious while they wait for legislative change to protect them.

Prichard said his biggest concern is that many other buildings across Florida were built in a similar time frame and with a similar design, construction method, and materials as Champlain Towers.

The biggest issue appears to be helping older condominiums accumulate the reserves they need to pay for future repairs. That's according to Bilzin Sumberg real estate partner Martin Schwartz, who helped shape legislative policies governing Florida's residential towers and guided the legislature in reducing the threshold for terminating a condo from 100% owner support to 80% back in 2007.



Martin Schwartz, Real Estate Partner at Bilzin Sumberg.

He said this is a good illustration of the theory of unintended consequences.

“By increasing the items necessary to reserve for and requiring that existing condominiums ‘catch up’ with the amount of reserves envisioned by the legislature, there would be a very substantial economic burden placed upon the unit owners,” said Schwartz. “The extra reserve

funds needed could only be met by either a substantial special assessment or a dramatic increase in assessments.”

Schwartz said if those items are factored in, the result could make the existing older housing stock unaffordable to current residents, which would worsen Florida’s affordable housing crisis.

### **Don’t Wait for Legislation**

Rather than waiting for legislation to reserve for important repairs, attorney David Haber of Haber Law recommended starting now.

“The sooner you get started, the less painful financially it will be in the future. While there is some pain financially for owners who didn’t in the past reserve and must now pay for reserves annually, it is still much less expensive than paying the bill for remediation at the end of the line, when no reserve funds were collected,” said Haber. “Get used to paying reserves annually. Educate the owners to pay now rather than later.”

He suggests having a property reserve study performed every two years or less to know what the components of the building cost to replace or repair, and to stop using money needed for structural or electrical repairs to fix up lobbies, pool furniture, hallways and carpets.

### **‘No Building In the U.S. Has Fallen Like This’**



David B. Haber founder of Haber Law.

Haber said it's important to remember that forensic engineers haven't issued a report as to the cause or causes of the Champlain Towers building collapse.

"Until final forensic reports are issued, nobody can say for certain, but I expect that it will not be one cause, but many mistakes which compounded upon one another. Remember that, other than the World Trade Center collapses, which were of course from a terrorist attack, no building in the U.S. has fallen like this in our lifetimes," said Haber. "Like the Space Shuttle Challenger tragedy, I presume we will find out it was a compilation of errors."

Haber said he also believes city or county building inspectors should get copies of the engineering reports and "hold the associations' feet to the fire" to get the work done faster.

"The concept that a 40-year inspection is not done on time and the certification is still not complete by year 42, 45 or even year 50 just cannot continue to occur," Haber said.

Although there aren't guarantees that another tragedy can be avoided through policy intervention, Prichard, said he believes there are bound to be occasional deficiencies when third parties manufacture, supply and install materials.

### **Competing Interests?**

Some changes could include requiring subcontractors to obtain a license establishing a minimum level of competence based on the Florida Building Code and to carry liability insurance for the type of work the subcontractor performs, according to Prichard. There could also be more stringent requirements for developers and builders to turn over operations and maintenance information when a condominium or homeowners' association transfers to the owners, including a detailed maintenance plan and schedule for all building components and systems.

Another change could include mandatory periodic inspections of a building's structural components and critical systems by qualified professionals beginning upon completion and continuing at appropriate intervals to identify deficiencies and necessary repairs as early as possible.

Prichard, said the challenge the legislature faces is making sense out of what initially appears to be competing interests among constituents and passing laws to address the problem equitably.

"Our experience, however, is the constituent interests are actually aligned. Developers and builders and their subcontractors and other industry participants want to create high-quality projects they can confidently sell, knowing Florida owners will enjoy them for generations to come," said Prichard. "Insurance companies want to avoid litigation and claims arising from deficient construction. Owners want to have confidence their investment is safe and, should a problem arise, they have the necessary resources to fix that problem."

Prichard said that if each party assumes part of the burden, there should be policies the legislature can enact to nearly eliminate the risk of another Surfside.

It's important for attorneys to educate board members about which difficult decisions are necessary to run condo and community associations.

“Specifically, attorneys can identify A). any existing legal requirements or best practices for inspections or other actions that would help identify potential construction deficiencies, and B). resources to help make necessary repairs, including legal action when appropriate,” said Prichard.

Miami-Dade County is in the process of passing legislation requiring inspection reports and to have them filed with the building official, with stiff penalties if the board does not comply, according to Haber. He expects other coastal counties will soon pass similar legislation.

“In addition, since the legislature did not act, the free market is acting. Insurance companies and financial institutions are taking matters into their own hands,” said Haber. “Insurance companies are raising rates on all coastal high-rise insurance policies by up to 250% in some cases, and in other instances, they are not willing to insure older buildings (40 to 60 years old) which have structural deficiencies that were not corrected and no reserves available to correct them. Similarly, financial institutions are no longer willing to lend to prospective purchasers of units in those buildings.”

The Florida Legislature will reconvene in 2023.