

# Surfside Collapse Teaches Lessons on Maintenance, Recertification in Seniors Housing

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Tragedies often guide reform and progress. After the Champlain South Tower condominium in Surfside, Florida, collapsed, attention has focused on preventing similar future tragedies. There is a renewed focus on ongoing oversight, construction and inspection of residential towers throughout Florida, especially for vulnerable members of society.



Joseph, left, and Coelho

## **Recertification requirements**

Let's begin with a brief introduction to the recertification requirements discussed in the aftermath of the Champlain South collapse. Surprisingly, recertification is not a state requirement, but a Miami-Dade County creation enacted in 1974. Only Broward County has followed Miami-Dade's lead by enacting similar requirements in 2005.

Under Section 8-11(f) of the Miami-Dade County Code, the owner of a building in existence for 40 years or longer is required to have the building inspected to determine the general structural condition of the building and the general condition of its electrical systems. The inspection outcome will determine if the property will be recertified for another 10 years or if improvements need to be made before recertification is granted.

If repairs or improvements are needed, owners are afforded another 60 days to complete them. Recertification dates are based on the original structure's Certificate of Occupancy anniversary.

The property owner must submit a written recertification report to the building department, prepared by a Florida registered professional engineer or architect, certifying that each building or structure is structurally and electrically safe for the specified use for continued occupancy. Failure to submit the required report will result in the issuance of a Civil Violation Notice, which, if ignored, ultimately results in the building being vacated and demolished.

### **Community backlash and protections for communities**

Following the Champlain Tower South collapse, there has been increasing scrutiny on the recertification requirements and whether more should be required. The issue is defining what the “more” means in general and practical terms.

There has been increased pressure on the Florida governor and state legislature to create statewide inspection mandates; a cry for increased local and state regulation on condominium associations and building operators; a push for increased reserve requirements; several joint action committees in legal and construction fields; and an overall mandate from millions of condominium residents throughout the state to feel safe.

Similarly, seniors housing communities in Florida are beginning to feel pressure to act. These pillars of the Florida housing community often do not have the protections afforded by the condominium board of directors. They may lack the long-term planning necessary to protect residents.

We advise owners and operators of seniors housing communities that the obligation to “do more” should begin with an immediate evaluation by a third-party engineer of the condition of the construction. Owners and operators often face uphill challenges with build quality.

Within the seniors housing community, several projects develop with governmental incentives but provide no oversight or protection for the residents against builders that do a poor job. In South Florida, affordable housing for seniors, whether independent living or in catered communities, is often overlooked in the housing market.

Some contractors and builders seek governmental aid earmarked for the housing, but see government-funded housing projects as an avenue to maximize profit over quality. In one seniors housing project we represented, windows were so poorly constructed that the elderly residents feared simple rainstorms. The resident renters had no recourse against the builders, despite living with significant water intrusion throughout their homes.

### **What the future looks like**

Without a centralized mandate to reform long-term building maintenance and care, a universal maintenance plan among different communities becomes difficult. Nevertheless, developments that proactively inspect and address structural concerns can often avoid long-

term costly repairs and structural concerns while more easily passing recertification checkpoints.

Long-term structural concerns usually manifest as problematic signs within three to five years after completing a building or home. Small indicators — such as leaks, cracks, discoloration or similar concerns — may pose little to no short-term danger, but create pathways for salt air and water to continuously erode structural components of a building.

Building owners and operators that independently examine the original construction and develop repair and maintenance protocols can save millions of dollars in costly repairs without facing a major budget crunch at the time of recertification. The original contractors and design professionals are often the most ideal partners to create efficient maintenance protocols. It is crucial for new developments to engage them in these discussions upon completion of their independent engineering evaluation.

In older developments, maintenance supervisors can serve as the initial spotters of problems, but an experienced repair contractor or forensic consultant is necessary to evaluate a building properly. Moreover, an experienced construction defect lawyer will be able to help navigate the legal hurdles, including potential timeliness issues, contractual limitations on claims, pre-suit notice requirements, and mediation and arbitration clauses.

If repairs are needed, someone adequately licensed and insured must be hired. The building's applicable commercial property insurance policy may cover the identified issues. However, many commercial property insurance policies will not cover the cost of remedying construction defects.

Engineers typically recommend a thorough inspection of the structural components of a new building at the time of occupancy and again at around three years from occupancy to account for any additional building settlement. These initial inspections are important to understand if any of the early indicators of structural erosion are present. They will also necessarily involve the developers, contractors and design professionals providing the mechanism to bring those parties together to form a long-term maintenance plan.

A third inspection, around nine years from occupancy, is often the last opportunity to perform inspections that hold builders accountable, while simultaneously allowing the completion of a voluntary recertification.

With so many housing communities in Florida sitting within miles of corrosive salt air, owners must take control of the safety of their buildings and engage in periodic inspections of the property's major components. While the state may provide a uniform recertification process in the future, and counties may ramp up inspection efforts, ultimately it will always be the responsibility of owners and operators to maintain their community properly.

The most important step the association can take to address long-term care and planning is to proactively inspect the building and create a long-term maintenance plan.