



Condo owners must prepare now for new condo safety law | Opinion

By Gabriel Coelho

The collapse of Champlain Towers in the early morning hours of June 24, 2021, is one of the deadliest structural engineering failures in U.S. history. The tragedy left nearly 100 people dead and sparked concern and action to prevent similar disasters around the state.

The structural failure prompted a review of hundreds of older buildings. All evidence showed that there were concerns about the integrity of the building; the collapse was caused by faulty construction and deterioration. A major concern is that many other buildings across Florida were built during a similar period with similar designs, construction methods, and materials. Combined with the Florida climate - saltwater and dampness – inferior reinforced materials can destroy the integrity of even the sturdiest structures.

Naturally, Floridians throughout the state, especially communities in South Florida, began scrutinizing the recertification requirements and whether cities, counties and the state should increase enforcement. The issue is figuring out what increased enforcement means in general and practical terms. Surprisingly, recertification of existing structures was not a state requirement but a Miami-Dade County creation enacted in 1974. To date, only Broward County followed Miami-Dade's lead and enacted similar requirements in 2005. There has been increased pressure on the Florida governor and state legislature to create state-wide 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.

A year since Champlain, Florida finally began to address those concerns by passing Senate Bill 4D, which establishes new structural inspection requirements and inspection of reserve funds held by an association, including the requirement to use them only for their designated purpose. At 30 years old, a Milestone Structural Inspection must be conducted for each building three or more stories tall. It must be completed, again, every ten years. If a building is less than three miles from the coast, the milestone inspection must be done at 25 years and again every ten years.

Associations must also have a Structural Integrity Reserve Study conducted to examine the funds set aside for required repairs to maintain the structural integrity of a property.

While we have advised clients about several aspects of condominium maintenance and association practices for years, this new law has established specific legal requirements that require compliance. Failure to comply could bring serious legal and liability problems for an association.

Associations need to be prepared to navigate the new laws. This will mean increased assessments, reserves, and hard decisions about how to fund long-neglected repairs. Moreover, structural repairs are naturally invasive, temporarily impacting the building aesthetic and potentially cutting off access to balconies and windows. Associations will also need to be wary of unlicensed contractors and/or engineers and ensure proper protocols are in place to monitor remediation work. Finally, associations should expect increased insurance premiums and out-of-pocket expenses related to inspections and monitors. While these are all changes intended to protect residents, it is not without their cost, and high-rise residents will need to be prepared.

In our experience working in the legal field of real estate and land use for nearly 40 years, the constituent interests are closely aligned. Developers, builders, subcontractors, and other industry participants want to create high-quality projects they can confidently develop and successfully sell, knowing Florida owners will have safe homes to enjoy for generations to come. Insurance companies want to avoid litigation and claims that arise from faulty construction. Owners want to have confidence in their investment, and should a problem arise, they will have the necessary resources and courses of action to remedy the situation. In response to the Surfside collapse, this bill establishes a framework for ensuring properties are maintained and Florida residents are protected. However, it will require associations to plan and act according to the law or face consequences that may ultimately be more costly.

Gabriel Coelho is Special Counsel at Ball Janik's LLP's Miami office. He may be reached at gcoelho@balljanik.com.