



August 2023

RE: 2023 Legislative Update – Condominium and Cooperative Associations

Dear Board of Directors:

The purpose of this letter is to provide your association with a summary of the most recent and relevant changes promulgated by the Florida Legislature impacting condominium and cooperative associations. Accordingly, please be advised of the following statutory changes which are now in effect:

Milestone Inspections

In 2022, the Legislature imposed a statewide structural inspection program for aging condominium and cooperative buildings to ensure that buildings are safe for continued use. In 2023, the Legislature adopted SB 154, which serves as a “Glitch Bill” in an effort to provide clarification and/or address inconsistencies with original language of §553.899, Fla. Stat.

a. Changes in Definitions

The term “milestone inspection” has been redefined to mean a structural inspection of a building, including an inspection of load-bearing elements and the primary structural members and primary structural systems as those terms are defined in §627.706, Fla. Stat. by a licensed architect or licensed engineer authorized to practice in the state of Florida for 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 revised definition of “milestone inspection” clarifies that the purpose of the inspection is not to determine whether the condition of an existing building is in compliance with the Florida Building Code or the fire safety code. Additionally, milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member. This amendment provided clarification to address concerns over a lack of manpower available to perform the inspections in a timely manner.

The term “substantial structural deterioration” was redefined to mean substantial structural distress or substantial structural weakness that negatively affects a building’s general condition and integrity. This does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes, unless the architect or engineer performing the inspection determines same to be a sign of substantial structural deterioration.

b. Deadlines.

The recent legislative amendments clarified the initial deadlines associated with the milestone inspection report. Specifically, an owner or owners of a building that is three (3) 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 must have a milestone inspection performed 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 ten (10) years thereafter.

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 shall be the date of occupancy evidenced in any record of the local building official.

Local enforcement agencies may extend the date by which a building's initial milestone inspection must be completed upon a showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an architect or engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstances to justify an extension.

A board of county commissioners or municipal governing body may adopt an ordinance requiring that a condominium or cooperative association (or any other owner subject to the statute) schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report. However, such repairs must be commenced within 365 days after receiving such report. The failure to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial deterioration identified in a phase two inspection report within the required timeframe may result in a determination by the local enforcement agency that a building is unsafe for human occupancy.

c. Proximity to Salt Water.

Originally, buildings located within three (3) miles of the coastline were required to have their milestone inspection performed by December 31 of the year in which the building reached 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. The Glitch Bill removed the provisions regarding buildings located within three (3) miles of the coastline. Instead, local enforcement agencies may determine that local circumstances, including environmental conditions such as proximity to salt water require that the milestone inspection must be performed by December 31 of the year in which the building reaches 25 years of age, based on the date of certificate of occupancy for the building was issued, and every ten (10) years thereafter.

d. Responsibility for arranging the milestone inspections.

The milestone inspection report must be arranged by the condominium association or cooperative association and any owner of any portion of the building which is not subject to the

condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements for the milestone inspection. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association.

e. **Exemptions.**

The milestone inspection requirements do not apply to any single family, two (2) family, or three (3) family dwelling with three (3) stories or fewer habitable stories above ground.

f. **Milestone Inspection Phases and New Notification Requirements.**

Upon determining that a building must have a milestone inspection, a local enforcement agency must provide written notice of such inspection to the condominium association or cooperative association and to any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership by certified mail, return receipt requested. The condominium or cooperative association must notify the unit owners of the required milestone inspection within fourteen (14) days after and provide the date that the milestone inspection must be completed.

Phase one of the milestone inspection must be completed within 180 days after the owner, or owners, or the building received written notice from the local enforcement agency. If a phase two inspection is required, then, within 180 days after submitting a phase one inspection report, the architect or engineer performing the phase two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection.

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 the material findings and recommendations in the inspection report to the condominium association or cooperative association, and any other owner of any portion of the building which is not subject to the condominium or cooperative form of ownership, and to the building official of the local government which has jurisdiction. Additionally, within forty-five (45) days after receiving the inspection report, the condominium or cooperative association 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, at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under Chapter 718 or 719, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission. Additionally, the association must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property, and must publish the full report and summary on the association's website, if the association is required to have a website.

g. **Inspection Reports prepared prior to July 1, 2022.**

Recognizing that many buildings (particularly in Miami-Dade and Broward Counties) were already subject to recertification/inspection requirements, the amendment provides that a local enforcement agency may 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 report substantially comply with the requirements of the milestone inspection. Notwithstanding that such inspection was completed, the association must comply with requisite unit owner notice requirements. If a previous inspection and report was accepted by the local enforcement agency, then the deadline for the building's subsequent ten (10) year milestone inspection is based on the date of the accepted previous inspection.

Structural Integrity Reserve Study and Reserve Requirements

a. Budget Reserve Requirements

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts 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 useful life and estimated replacement cost or deferred maintenance expense of the reserve item.

In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for items identified in §718.112(2)(g)(list discussed below) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study.

With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining life of greater than 25 years, the association is not required to reserve replacement costs for such items, but the association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.

b. Waiving and Reducing Reserves and/or Use of Reserves for Alternate Purposes

The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by statute. However, for a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by statute for items identified in §718.112(2)(g), except that members of an association operating a multi-condominium may determine to provide no reserves or less reserves than required if an alternative funding method has been approved by the Division.

Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority of all of the voting interests of the association. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not use reserve funds, or any interest accruing thereof, for any other purpose other than the replacement or deferred maintenance costs of the components listed in §718.112(2)(g).

c. Structural Integrity Reserve Study.

The term “structural integrity reserve study” was revised to mean a study of the reserve funds required for future major repairs and replacements of the condominium property performed as required under §718.112(2)(g). A structural integrity reserve study is based on a visual inspection of the condominium property.

A residential condominium association must have a structural integrity reserve study completed at least every ten (10) years after the condominium’s creation (i.e., the date the Declaration of Condominium is recorded) for each building on the condominium property that is three (3) stories or higher in height as determined by the Florida Building Code which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

- Roof
- Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in §627.706, Fla. Stat.
- Fireproofing and fire protection systems
- Plumbing
- Electrical systems
- Waterproofing and exterior painting
- Windows and exterior doors
- And any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00 and the failure to replace or maintain such item negatively affects the items listed above as determined by the visual inspection portion of the structural integrity reserve study.

At a minimum, a structural integrity reserve study must 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. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated

remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

d. Deadlines to Complete Structural Integrity Reserve Study

Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

If the milestone inspection required by §553.899 Fla. Stat., or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

e. Persons Who May Perform the Structural Integrity Reserve Study.

A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

f. Exemptions from Structural Integrity Reserve Study Requirements

The legislative amendments clarify that commercial condominiums are exempt from the structural integrity reserve requirements. Likewise, the structural integrity reserve requirements do not apply to buildings less than three (3) stories in height, single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground, nor 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.

Official Records

Section 718.111, Florida statutes, pertaining to the inspection of official records of the association has been revised to provide that the official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times. The right to inspect records includes the right to make or obtain copies, at a reasonable expense, if any, of the member and of the person authorized by the association member as a representation of such member.

Officer and Director Fiduciary Duties

If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study, such failure is deemed to be a breach of the officers' and directors'

fiduciary relationship to the unit owners. Additionally, if the officers or directors of an association willfully and knowingly fail to timely have a milestone inspection performed, such failure is deemed a breach of the officers' and directors' fiduciary relationship to the unit owners.

Developer Obligations and Disclosures

The developer requirements to provide the structural integrity reserve study as part of the turnover process have been deleted and replaced with a requirement that the developer have a turnover inspection report in compliance with §718.301(4)(p)&(q), Fla. Stat.

There are several developer disclosures required to be provided to initial buyers of condominium units, including providing a milestone inspection report as well as a copy of the most recent structural integrity reserve study or notice that same is not completed. The statutory amendments require that the reports be provided at least fifteen days prior to execution of the purchase and sale agreement and further provide buyers with the right to cancel.

Turnover Inspection Report

Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

- Roof
- Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in §627.706, Fla. Stat.
- Fireproofing and fire protection systems
- Plumbing
- Electrical systems
- Waterproofing and exterior painting
- Windows and exterior doors

In addition, notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property comprising a turnover inspection report:

- Elevators
- Heating and cooling systems
- Swimming pool or spa and equipment
- Seawalls
- Pavement and parking areas

- Drainage systems
- Irrigation systems

Re-Sale Disclosure Requirements

Unit owners who sell their condominium units are required to provide prospective buyers with copies of the milestone inspection report and the structural integrity reserve study, nor notice that such reports have not yet been prepared, at least three (3) days prior to execution of the purchase and sale agreement. If the reports are provided, thereafter, the buyer has a three (3) day right of rescission from the time such reports are provided.

Disputes Regarding Milestone Inspection and SIRS

The provisions of Fla. Stat. §718.1255, which govern alternative dispute resolution of disputes has been amended to include as part of the definition of the term “dispute” the failure of a board of administration to (1) obtain a milestone inspection required under §553.899, Fla. Stat.; (2) obtain a structural integrity reserve study required under §718.112(2)(g), Fla. Stat.; (3) fund reserves are required for items identified in §718.112(2)(g), Fla. Stat.; or (4) make or provide necessary maintenance or repairs of condominium property recommended by a milestone inspection or a structural integrity reserve study. However, such disputes are not subject to nonbinding arbitration, but must be submitted to pre-suit mediation and, if unresolved, be subject to litigation.

Maintenance of Common Elements

Maintenance of the common elements is the responsibility of the association, except for any maintenance responsibility for limited common elements assigned to the unit owner by the declaration. The association shall provide for the maintenance, repair, and replacement of the condominium property for which it bears responsibility pursuant to the declaration of condominium. After turnover of control of the association to the unit owners, the association must perform any required maintenance identified by the developer pursuant to §718.301(4)(p) &(q), Fla. Stat., 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 Community Associations Institute or the Association of Professional Reserve Analysts.

The foregoing statutory changes will have a significant impact on association operations. It is critical that your association review the foregoing statutory changes and take the necessary steps to achieve compliance. Should you have any questions or concerns with respect to any of the statutory changes discussed above, please do not hesitate to reach out to one of our attorneys and we will be happy to assist you.

Sincerely,

THE EISINGER LAW TEAM