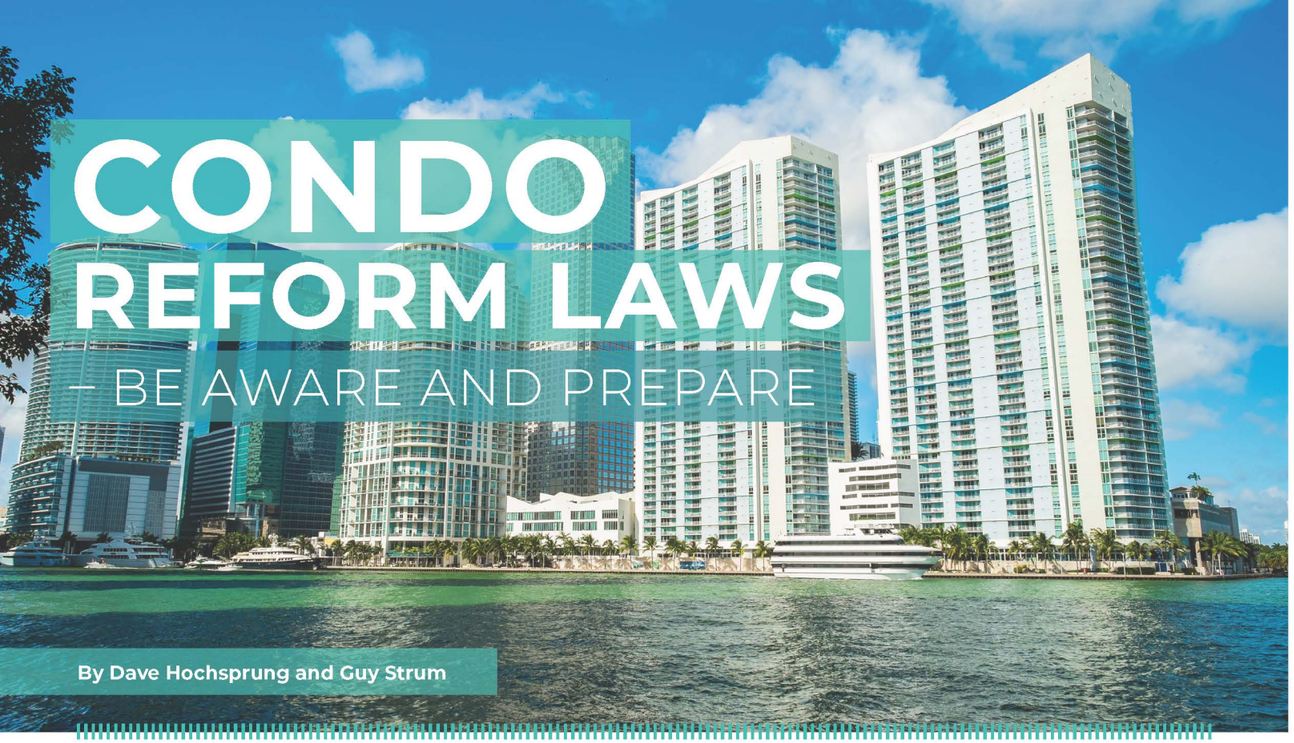

CONDO REFORM LAWS – BE AWARE AND PREPARE

By Dave Hochsprung and Guy Strum

Condominium and cooperative associations in Florida need to brace themselves for massive changes regarding building inspections and reserve funding brought about by recent legislation. Practitioners that serve the industry need to be aware of these changes to advise their clients as they try to comply with the new law. However, associations may find compliance challenging as an analysis of the new law raises several questions – questions that don't seem to have answers, yet.

During the Legislature's Special Session in May of this year, Senate Bill 4-D (with companion House Bill 5-D) was filed. This proposed legislation was unanimously approved by both the House and Senate and signed into law by the governor on May 26, 2022. The legislation applies to condominium and cooperative associations with buildings three stories or higher. The main provisions of the law require certain associations to have Milestone Inspections and Structural Integrity Reserve Studies. Legislation of this type was inevitable in the wake of Surfside Condominium collapse in October 2021. Similar legislation was introduced during the Regular Session, but lawmakers were unable to reach a compromise before time ran out.

Specific language in the new law states: "The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use." This statement clearly sends the message to association board members that they will be accountable to their membership for the structural integrity of their building.

Key provisions of each of these new requirements follow below.

Milestone Inspections

- Required for condominium and cooperative association buildings that are three stories or higher and greater than 30 years old (or 25 years if within three miles of a coastline).
- If the buildings meet the age criteria now, the inspection must be done by Dec. 31, 2024.
- Must be performed by a licensed architect or engineer.
- Must be done every 10 years after the initial inspection.
- The inspection consists of two phases. Phase 1 requires visual inspection of certain elements of the building to assess whether "substantial structural deterioration" is identified. If none is found, no further inspection is required, and a report is prepared and submitted stating such findings. Phase 2 is required if Phase 1 does indicate substantial structural deterioration. This inspection may include destructive or nondestructive testing to determine the extent of deterioration and must make recommendations for repairs.

The legislation provides that a board of county commissioners may adopt an ordinance requiring the association to make the recommended repairs.

Structural Integrity Reserve Study

As defined by statute, the Structural Integrity Reserve Study is a "study of the reserves required for future repairs and replacement of common areas based on a visual inspection of the common areas."

- Required for condominium and cooperative association buildings that are three stories or higher.
- The visual inspection must be performed by a licensed architect or engineer.
- Must be completed by Dec. 31, 2024.
- Must be prepared at least every 10 years.
- The study must identify the common areas being inspected. For each item, it must state the estimated remaining useful life and estimated replacement cost or deferred maintenance.
- Must include items identified in Florida Statute 718.111(2)(g) ("Paragraph (g) reserves"). (See table on next page.)
- Provide a recommended annual reserve funding amount that will provide the necessary funds to pay for the replacement or repair of these items.
- The recommended funding requirements of the study **must be** included in the association's annual budget.
- Effective Dec. 31, 2024, funding for Paragraph (g) reserves **cannot be** waived or reduced.
- Alternate use of Paragraph (g) reserves is not allowed, even with a membership vote.

The FICPA Common Interest Realty Association Committee has a subcommittee devoted to reviewing proposed legislation and providing comments as needed. The committee reviewed the new legislation and identified a few concerns that may prove problematic as associations implement the requirements of the new law.

Separating required reserves that exist in current pooled funds

Paragraph (g) reserves carry with them a different set of requirements regarding funding and alternate use compared to regulations over existing reserves. As a result, associations will have to separate Paragraph (g) reserves from other reserves to properly administer those funds. Separating these reserves will be problematic if an association has maintained reserves on the pooled method. Existing pooled reserves will likely include funds for Paragraph (g) reserves. As these items now need to be separated, a question arises: What dollar amount of those pooled reserves can be assigned to the Paragraph (g) reserves that need to be administered under these new requirements? By definition, reserve items in a pool have no assigned value.

A reasonable method could be established. A present-value approach looking at the required expenditures in the future and bringing them back to a present value would probably be the most technically correct. Theoretically, the sum of those present values should be the amount in the reserves.

Another question is whether funding for Paragraph (g) reserves can be calculated on the pooled or straight-line method. Since the new law is silent on the issue, it seems we can assume that either method would be acceptable. The pooling method would soften the financial impact.

RESERVE ITEMS AS IDENTIFIED IN FLORIDA STATUTE 718.111(2)(G)1 (A-J)

a. Roof
b. Load-bearing walls or other primary structural members
c. Floor
d. Foundation
e. Fireproofing and fire protection systems
f. Plumbing
g. Electrical systems
h. Waterproofing and exterior painting
i. Windows j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the aforementioned items as determined by the engineer or architect performing the visual inspection portion of the structural integrity reserve study.

What type of reserve study needs to be performed for the nine years between the required Structural Integrity Reserve Studies?

The law is clear that the Structural Integrity Reserve Studies must be performed once every 10 years. The results of that study must be included in the association's annual reserve budget, and Paragraph (g) reserves as identified in that study cannot be waived or reduced. The new law is silent as to what elements are required for a reserve study that would be performed in the other nine years, other than what is already in the statute prior to the new law. This could lead to some manipulation of the inputs for the budgets in years that don't require the Structural Reserve Integrity Study.

Can associations use reserve studies that don't conform with the elements of a Structural Integrity Reserve Study in the years they are not required?

Possible inconsistency when the impact of Structural Integrity Reserve Studies goes into full effect

Structural Integrity Reserve Studies are required to be completed by Dec. 31, 2024, presumably for inclusion in the 2025 budgets for calendar-year-end associations. The new law prohibits the waiver or reduced funding of Paragraph (g) reserves effective Dec. 31, 2024. As a result, the reserves in a 2025 budget that were derived from and computed by the necessary Structural Integrity Reserve Study information and funding plan could be waived or reduced by the membership as long as the vote is done before Dec. 31, 2024. We don't believe that was the legislative intent, but it seems like an issue that needs to be resolved.

The Florida Administrative Code contains rules promulgated by state agencies. These rules are generally created to clarify language contain in Florida Statutes and are usually created as a result of a legislative directive contained in statute. We understand that, at present, there is no agency that has rulemaking authority to clarify these issues.

The full financial impact of the reserve funding requirement in the new law is, for most associations, undeterminable at this time. However, it will probably be significant. As a result, associations affected by the new law should consider including a footnote in their financial statements describing the mandatory funding requirements.

We are hopeful that these questions can be answered either in the next Legislative Session or through rulemaking.

The authors extend their thanks to the FICPA CIRA Committee's Legislative Subcommittee for their input and analysis.