



June 17, 2022

Re: Notice of New Legislation – Senate Bill 4-D

Dear Client(s) of the Firm:

As you may be aware, Governor Ron DeSantis recently signed Senate Bill 4-D into law as of May 26, 2022.<sup>1</sup> This Bill was enacted in response to the Surfside disaster and is intended to address safety concerns associated with the structural integrity of certain condominium and cooperative buildings in Florida. The obligations imposed under the new law are substantial, and we strongly encourage our clients to confer with management and with legal counsel to formulate a plan of action to ensure compliance with the requirements outlined herein. **Note that the failure to abide by the requirements established by the new law will constitute a breach of fiduciary duty on the part of the individual officers and directors of the association, thereby subjecting those officers and directors to personal liability.**

The new law contains four (4) main components: (1) reporting requirements; (2) inspection requirements; and (3) reserve study requirements, and (4) reserve funding requirements.

#### **Reporting Requirements:**

Application: Applies to all condominium associations and cooperative associations.

Requirement(s): All condominium associations and cooperatives associations must provide the following information to the Department of Business and Professional Regulation (“DBPR”):

- a. The number of buildings within the community that are three (3) stories or higher;
- b. The total number of units in each building;
- c. The address of each/all building(s); and
- d. The county within which the building(s) are located.

\*Deadline: The deadline to provide this information to the DBPR is **January 1, 2023**. Any changes must be reported to the DBPR within six (6) months of the date of the change.

#### **Milestone Inspections:**

Application: Applies to all condominium and cooperative buildings that are three (3) stories or more in height.<sup>2</sup>

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<sup>1</sup> The new law took effect immediately upon being signed into law by Governor DeSantis on May 26, 2022.

<sup>2</sup> There are certain exceptions. For example, the Statute exempts: “single family, two-family, or three-family dwelling with three or fewer habitable stories above ground.” Consult with legal counsel for an opinion specific to your community as there are several undefined terms which we expect will soon be clarified by the legislature.

Requirement(s): Buildings that are three (3) stories or more in height must be inspected by a licensed architect or engineer. All deadlines listed in this subsection are calculated from the date of issuance of the certificate of occupancy for that building.

- a. Buildings that are three (3) stories or more and the certificate of occupancy for the building was issued on or before July 1, 1992: Must be inspected by December 31, 2024.
- b. Buildings that are three (3) stories or more and the certificate of occupancy for the building was issued after July 1, 1992:
  - I. Located within three (3) miles of the coastline: Must be inspected by December 31<sup>st</sup> of the year that the building reaches twenty-five (25) years of age.
  - II. Not located within three (3) miles of the coastline: Must be inspected by December 31<sup>st</sup> of the year that the building reaches thirty (30) years of age.

Flow Chart:

- I. Is the building three (3) stories or higher? <sup>3</sup>
  - a. If no: you need not perform milestone inspections under the new law.
  - b. If yes: was the certificate of occupancy for the building issued on or before July 1, 1992?
    - i. If yes: inspection deadline is December 31, 2024.
    - ii. If no: is the building located within three (3) miles of the coastline?
      1. If yes: inspection deadline is December 31<sup>st</sup> of the 25<sup>th</sup> year after the certificate of occupancy was issued.
      2. If no: inspection deadline is December 31<sup>st</sup> of the 30<sup>th</sup> year after the certificate of occupancy was issued.

Future Inspections: Subsequent inspections must take place every ten (10) years following the initial inspection.

Scope of Each Inspection: Each inspection must be completed by a licensed architect or engineer. The architect / engineer shall generally inspect the structural components of the building for the purpose of determining the adequacy of same and for the purpose of identifying any potentially dangerous conditions. The initial inspection (phase one) includes a visual examination of the building(s). A subsequent, more-detailed inspection (phase two) may be necessary where phase one reveals substantial structural deterioration, in which case the architect / engineer may need to perform destructive or non-destructive testing. Additional detail regarding the requisite scope of the inspection(s) can be found in the Statute.

Inspect Report: The inspecting architect or engineer must provide a sealed and signed inspection report detailing their findings and recommendations. The report shall identify any unsafe / dangerous conditions, to include any concerns relating to the structural integrity of the building or its components. \*A copy of the inspection report(s) must be: (i) provided to all unit owners, (ii) posted on-site, (iii) posted on the Association's website (if the Association maintains a website), and (iv) maintained as an official record of the association. Note: both members/owners and tenants are entitled to inspect/copy the report(s).

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<sup>3</sup> See Footnote 2.

**Inspection Costs:** Inspection costs are to be borne by the members as a common expense.

**Demand for Inspection by Enforcing Agency:** Upon receipt of written notice that an inspection is required or past-due, the association shall have 180 days to complete the inspection.

**Repairs following Inspection:** Associations shall commence or schedule repairs to address structural deterioration within 365 days after receiving the inspection report. This deadline may be modified as may be deemed appropriate in light of the severity of the issue(s) listed in the report.

### **Reserve Studies:**

**Application:** Applies to all condominium and cooperative buildings that are three (3) stories or more in height.

**Requirement(s):** Associations must obtain a structural reserve study for each building that is three (3) stories or higher. The reserve study must address the following: roofs, load-bearing walls and other primary structural components, floors, foundations, fireproofing and fire-protection systems, plumbing, electrical systems, waterproofing and exterior painting, windows, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.00, and the failure to maintain such item would negatively affect one or more of the above listed items.

**Deadline:** Must obtain structural reserve study on or before December 31, 2024. Must obtain a subsequent structural reserve study every ten (10) years thereafter.

**Official Record:** Reserve study(ies) must be maintained as an official record of the association for not less than fifteen (15) years. Note: both members/owners and renters are entitled to inspect/copy the inspection report(s).

### **Reserve Funding:**

**Application:** Applies to all condominium and cooperative buildings that are three (3) stories or more in height.

**Requirement(s):** Associations must establish and fund structural reserves in accordance with the reserve study. If the Association does not yet have a reserve study or if the study does not state a dollar amount, the amount to be reserved shall be formulated based on the remaining useful life of the reserve item and the estimated replacement cost of the item / the deferred maintenance expense of the item.

**Waiver of Funding:** As of December 31, 2024, structural integrity reserves may not be waived or reduced.

**Purpose of Reserves:** As of December 31, 2024, structural integrity reserve funds may not be allocated towards any other purpose other than their intended purpose.

### **Conclusion:**

The foregoing is merely a general summary of the new law and the deadlines and requirements associated therewith. We encourage our clients to consult with management and legal counsel to

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resolve any immediate questions or concerns, including questions relating to the applicability of the above to your specific community.

We would also be remiss if we did not take this opportunity to refer our client's to our prior communication addressing the ten-year statute of repose period applicable to most construction claims. If you are concerned about defects associated with work performed within your community, including potential claims against your community's developer, it would be prudent to investigate those concerns now, as waiting to perform a building inspection until the deadline(s) imposed by this new law could result in a waiver of the association's right to bring a claim against the party responsible for said defect(s).

Please do not hesitate to contact our office with any questions regarding the foregoing. As always, we appreciate the opportunity to serve as counsel to your community.



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Bennett L. Rabin  
On behalf of the Firm