

Designed to fail: How Florida's lack of condo board oversight could mean another Surfside

Clayton Park

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DAYTONA, Fla. – The deadly [Surfside collapse](#) is casting a spotlight on how Florida's condominiums are built and regulated.

The [40-year-old Champlain Towers South](#) in Miami-Dade County [killed 98 people](#) when the 12-story building unexpectedly crumbled on June 24.

A USA TODAY Network analysis of property records in the coastal Florida communities of Miami Beach, Fort Myers Beach, Daytona Beach and Palm Beach show more than a thousand condos three stories or taller close to the water constructed in 1981 or earlier. There are likely many more across the state. Some date back to the early 1960s. With so many aging oceanfront condos, could a collapse happen again?

An examination of the way high-rise condos are regulated and maintained in Florida shows why some experts believe the system was designed to fail.

And human nature plays a part: Many condo boards defer repairs because of the costs. Too much economizing could be deadly.

Investigation: [At least 9 victims of 98 dead may have initially survived Surfside condo collapse, but were not found by rescue teams](#)

Surfside collapse probe: [Slow pace of investigations angers community](#)

So far, there have only been two high-rise condo collapses in Florida to date. In addition to the Surfside tragedy, [a five-story structure under construction in Cocoa Beach](#) suddenly toppled in 1981, killing 11 workers.

But is it realistic to think only a few condos are in danger?

"Buildings in Florida in general are only designed to have a shelf life of 40 to 50 years," said Ariel Neris, a structural engineer in Seminole County.

"It doesn't mean you have to demolish it or that it's unsafe after that period of time, but it might require significant structural, mechanical and/or electrical and plumbing upgrades, depending on the situation," he said. "Buildings closer to the coast are more exposed to salt air that increases the rate of corrosion."

"Collapses so far have been very rare, but there are some areas where buildings constructed before the late 1990s may not have been built to the latest building standards," said Neris, the 2021 president of the Central Florida chapter of the Florida Structural Engineers Association.

Since the Surfside collapse, several South Florida buildings have been evacuated because of structural concerns. They include an eight-story condo tower in Miami where residents were [ordered to vacate on Aug. 9](#). The 138-unit complex was built in 1973.



A potential collapse may have been averted in 2010 when a 15-story high-rise condo in Sarasota called Dolphin Tower was evacuated after the discovery of significant cracks in the concrete slab floor for the fourth floor. The support columns for the parking garage on the building's three lower floors were also found in danger of failing. The \$8.8 million in repairs took nearly five years to complete. The building was constructed in 1973.



Morabito Consultants, the Maryland structural engineering firm that took part in making the repairs to Dolphin Tower, was also the company that studied Champlain Towers South before its collapse.

Surfside condo collapse reveals 'glaring hole' in system

Matthew Shapiro, a condo law attorney with Rice Law Firm in Daytona Beach, said it's clear that the Surfside collapse revealed "a glaring hole" in the state's laws and regulations regarding how condos are built and maintained.

The state's building codes for oceanfront high-rise condos were strengthened in 1998 to become arguably the strictest in the nation. But that's only for when they are being constructed.

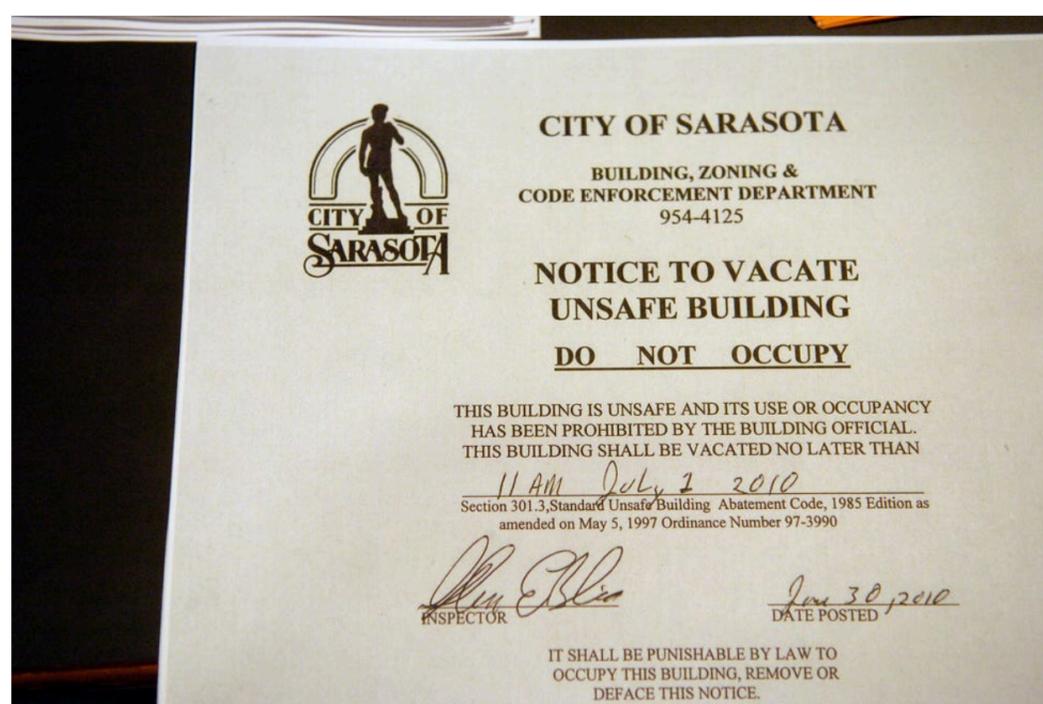
Once the developer turns the buildings over to residents, the responsibility for maintaining and repairing them falls solely on the shoulders of the condo association boards, according to state law.

The Florida Condominium Act was signed into law in 1963 when condos started becoming prevalent in the state. Since then, the act has been continually revised.

The act, as currently written, goes into extensive detail about the responsibilities of condo boards. They include the need to keep financial records, the right to issue liens and access residents' units, as well as rules regarding the display of religious decorations.

Nowhere in the voluminous 157-page document are there any requirements for periodic structural inspections or for making timely repairs. It also does not address the need for proper building maintenance.

Florida is one of 11 states that require condo boards to maintain financial reserves. But the Sunshine State is the only one that also gives condo association members the ability to waive or only partially fund those reserves.



Florida condo associates put off expensive, needed repairs

Too many condo associations in Florida defer maintenance and repairs because of the high cost, Shapiro said. They also do it because current state law allows them to, he pointed out.

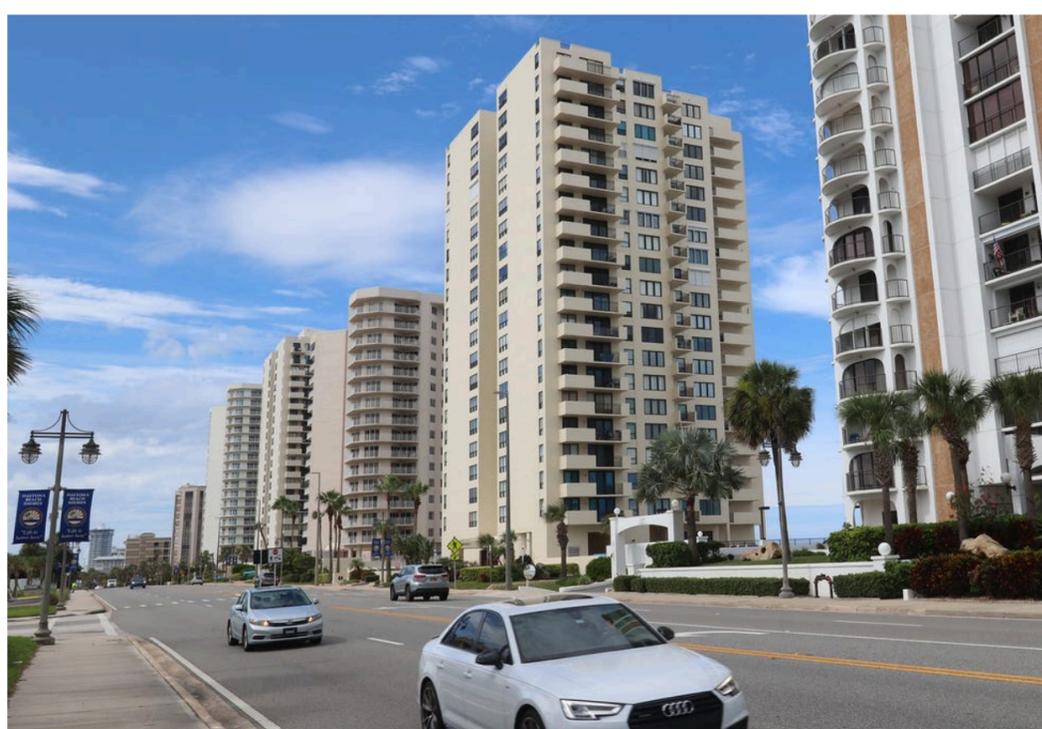
Shapiro believes the only solution is to make periodic inspections, maintenance and timely repairs mandatory. "I also believe there needs to be greater guidance within the Condominium Act as to what constitutes an appropriate amount of reserves," he said.

The condo association for Champlain Towers South had just \$706,460 in its reserves last year even though it faced more than \$10 million in projected repair costs at the time.

"You're handing over the keys to maintaining and caring for these buildings to people who are not always up to the task, no matter how well intended they may be," said Shapiro. "Condo association boards are made up of volunteers, primarily retirees of varying levels of education. They get no compensation and are tasked in theory with understanding multiple levels of law, including the Condominium Act as well as regulations regarding not-for-profits. It's people who oftentimes find themselves in over their heads."

"What's more, board directors who try to do the right thing by urging approval of special assessments or increasing reserves can find themselves subject to push back and threats of litigation from other members," he said. "It's a thankless role."

Making inspections, maintenance and repairs mandatory on a statewide basis would eliminate that problem, Shapiro said. "Board directors could then say, it's not us, it's the state that's making us do it."



Florida collects condo fees, but what for?

The Division of Florida Condominiums, Timeshares & Mobile Homes each year collects a \$4 fee from every condo unit owner in the state. In 2020, those fees, including those collected from timeshares and mobile home parks, totaled \$13.7 million.

That money goes into a trust fund that is to be used to investigate complaints as well as for classes to educate condo board members. But is that money well spent?

Some experts say no.

Once control of a condo building is turned over from the developer to residents, the scope of what the division can investigate under the Florida Condominium Act is limited to "complaints related only to financial issues, elections and unit owner access to association records."

So the trust fund money wouldn't help in finding or fixing structural problems.

And there's not a lot spent on condo board education either. The division authorized just 22 classes attended by a total of 4,176 people in the fiscal year that ended June 30, 2020. That's just a tiny fraction of the more than 20,000 condo associations in Florida, according to Travis Moore, a Florida lobbyist for the Community Associations Institute. CAI, which is based in Falls Church, Virginia, represents condo associations throughout the country.

The Sunshine State has more than 1.5 million condo units, the most of any state in the nation.

It doesn't help that the Florida Legislature each year routinely diverts millions of dollars from the state's condo trust fund to be used for other purposes. In 2020, \$5 million was swept into the state's general fund where it becomes impossible to track how the money was used.

"For years, we've said, please don't sweep that fund, but every year, the Legislature reallocates that money," said Moore.

Disappearing condo fees: Legislature diverts millions of dollars collected from condo owners despite glaring need for HOA training

In addition to a lack of training, condo boards face the challenge of convincing association members to pony up extra money. Many balk at that because they argue: "I'm not going to be here in 15 years," Moore said.

In truth: "Reserves are not just for the future, they're for right now," he said. "Your condo unit in the sky is only as safe and valuable as the building holding it up."

Maintaining adequate financial reserves all along can mitigate such disputes, said Shapiro.

"When the money is already sitting in the reserves, you don't need these large special assessments," he said. "If you've got a project that needs to be done and the money, or at least most of it, is already sitting there, you're not going to have political push back from the members."

'Bill that should have been paid all along'

Ormond-by-the-Sea, Florida, resident Victoria Fahlberg said the oceanfront condo complex where she lives finally elected a new board president this year along with four other new board directors after several members "who dominated the board for the past decade" finally stepped aside.

The new board commissioned a structural inspection of the 11-story oceanfront complex which was built in the early 1970s. Residents recently got the unwelcome findings of that inspection: a need for structural repairs that are expected to cost more than \$4 million.

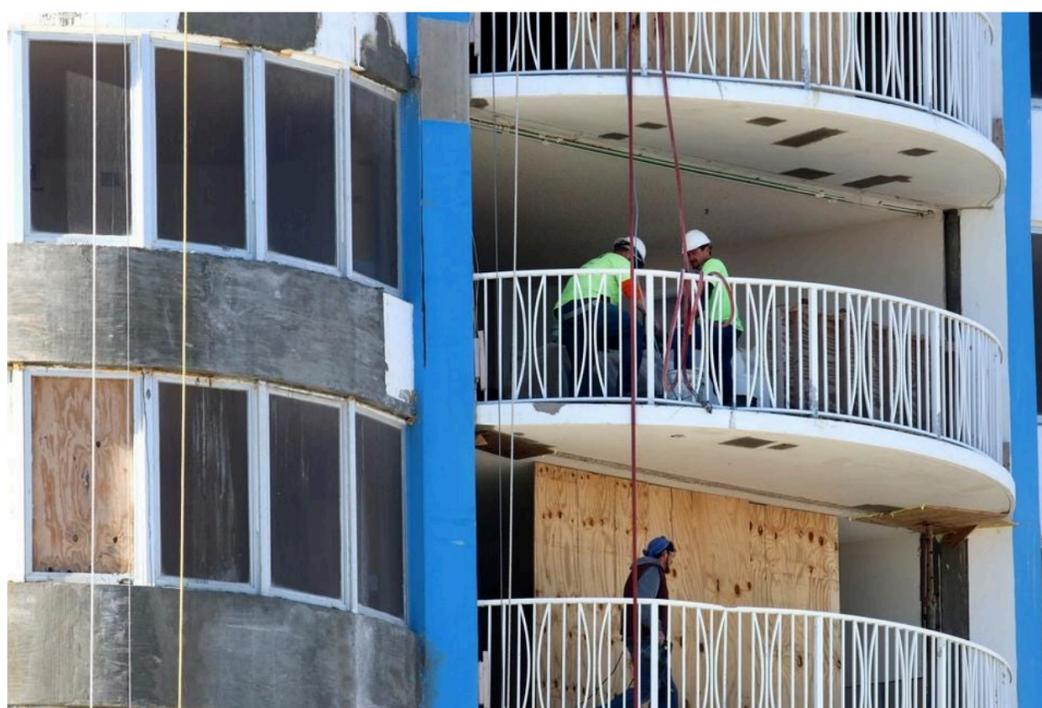
"A number of the balconies have cracks that go into the interior of the units," Fahlberg said.

Nearly half of the special assessment is to repair the balconies. The rest is to repair general concrete spalling, the construction term for cracks, around the building, she said.

Fahlberg said the Surfside collapse has "anyone who lives in a condo" worried it could happen to them.

"We were told that our building is in fair condition, but if we don't make the repairs, it could get worse," she said. "I'm really angry because the other HOA board we had, all they were doing was cosmetic. They never took care of these major things," said Fahlberg who moved into the complex in November 2018.

"Here's what really makes me angry: Some people have owned units here for decades yet we get stuck with a bill that should have been paid all along," Fahlberg said. "I have some neighbors that just bought their condo (a few) months ago. They had no idea this was coming and neither did I."



Maintenance can be extremely pricey, especially for oceanfront high-rise condos.

Just to repaint an oceanfront high-rise condo, the cost can run anywhere from \$10,000 to \$20,000 for up to four stories, but for high-rises it can cost \$40,000 to \$50,000 or more because you have to put up scaffolding to paint the building, said said Ormond Beach, Florida, architect Ben Butera.

Structural inspection costs can be "astronomical," he said.

"You have to X-ray every floor to see how extensive the damage is," Butera said.

The process for structural inspections, also known as destructive testing, requires portions of the interior drywall to be removed so the concrete and metal rebar in the support columns can be examined.

That can easily cost \$25,000 or more, according to Butera.

Two counties require periodical structure inspections

The Florida Condominium Act wasn't always so hands-off when it came to inspections once control of buildings are turned over to condo associations.

In 2008, the Florida Legislature amended the Condominium Act to require buildings three floors or higher to be inspected once every five years. However, the act allowed condo associations to waive that requirement.

The Legislature removed that requirement for periodic inspections in 2010 as part of an overall rewrite of the Florida Building Code.

The Florida Condominium Act currently requires condo associations to pay for an insurance appraisal every three years to determine the replacement value of the building's exterior and common area amenities.

But that is no substitute for a building inspection, said Dreux Isaac of Dreux Issac & Associates Insurance Appraisals in Orlando.

"It's not an investigation," said Isaac of the appraisals of condo buildings that he and others in his profession conduct throughout the state. "It's not an engineering study in any sense. An appraisal to determine replacement cost is somewhat of a modified shell appraisal. The appraisal does not look at the structural condition."

Isaac added, "I've looked at so many buildings over the years in coastal communities throughout the state and I can tell you, corrosion is a prevalent problem. It becomes this monster where repairs are deferred and delayed and problems continue to snowball."

Currently only two out of the state's 67 counties require high-rise condos to be periodically inspected for structural safety: Miami-Dade and Broward counties.

But the re-certification requirements for condos in those two counties only kicks in when buildings turn 40 years of age.

The Champlain Towers South building that recently collapsed in Miami-Dade County was built in 1981. The condo association was still in the process of complying with the county's 40-year re-certification requirements when the structure suddenly gave way.

An inspection of the building in 2018 found evidence of deterioration and recommended structural repairs that would have cost several million dollars. The condo association dragged its heels in making those repairs because of the cost, prompting its then-board president to resign in protest in 2019, according to news reports.

Miami condo attorney David Haber said there is no way repairs to Champlain Towers South could have been completed this year because they began so late.

"Even if the building had not gone down, the repairs wouldn't have been done for at least another couple of years," he said. "Under the current laws in Miami-Dade County, they wouldn't have suffered a penalty if they didn't get re-certified until year 42 (of the building)."

Florida Gov. Ron DeSantis's office recently issued a statement urging patience on drawing conclusions regarding the causes of the Surfside condo collapse until a full investigation can be completed. Some experts say that investigation could take as long as two years.

"Only a thorough, timely investigation can provide an adequate basis for any statewide policy change in the aftermath of this tragedy. It would be irresponsible to preemptively assume the causes of the collapse before reviewing the findings of any investigation," according to the Aug. 4 statement from DeSantis provided by the governor's press secretary Christina Pushaw.



"There could be multiple causes (for the collapse). It could be like the Challenger Space Shuttle where so many things happened all at once," Haber said in a phone interview. "But what we DO know is that the condo association had two-and-a-half years before they passed the special assessment (to make repairs), amid a lot of rancor."

State Rep. Anna V. Eskamani, a Democrat who represents the 47th district that includes the Orlando area, believes some state lawmakers could be hoping the Surfside collapse investigation finds enough unusual circumstances to conclude there is no need to change state laws regarding condos.

"The Legislature has a habit of de-regulation, but safety is something that should be regulated," she said. "Right now, the state's condo laws and building codes are very much designed in favor of developers and builders to be not what is the safest method, but what's the cheapest. That's because developers and builders have a loud voice. They also cut a lot of checks. As a result, their opinions carry a lot of weight."

Some state lawmakers are builders and/or developers themselves.

State Sen. Keith Perry, a Republican who represents the eighth district that includes Alachua, Putnam and Marion counties, is the owner of Perry Roofing Contractors in Gainesville.

Perry in this year's Legislative session introduced a bill allowing building inspections to be conducted virtually without a building official or inspector to be physically present on site, with the exception of "certain structural inspections." That bill was signed into law by Gov. DeSantis on June 29.

"The bill on the virtual inspections was just making use of the technology that's available: what can you look at where you don't need to be in person," said Perry. "Things that already were just being inspected visually. Certainly nothing to do with structural."

Rusty Payton, CEO of the Florida Home Builders Association, defended the passage of the bill allowing virtual inspections.

"All that bill did was clarify and codify what was already being done regarding inspections of stuff like doors and windows," he said. "It is not designed for structural. There's nothing to be alarmed at with that bill."

Payton said his association re-examined the bill to allow virtual inspections after the Surfside condo collapse, but said, "the more we looked at it, the more comfortable we got and it was signed into law."

Neris of BBM Structural Engineers in Longwood said virtual inspections "can be an add-on, but they should be in addition to, not in place of, an in-person inspection. A virtual inspection by itself, I don't think it's good enough. How do you know you're seeing the whole structure?"

"Even a small thing like a roof that's not properly sealed, if there's a small leak, after several years it could lead to a structural failure," he said.

Moore agreed that the trend in the state Legislature has been towards reducing costs, regulations and legal liabilities for developers and builders.

"Often it's to the detriment of condo residents," he said.

Case in point: "There was a bill introduced this year that would have made it extremely difficult and costly for condo residents to sue developers for construction defects," Moore said. "We were able to help defeat it."

What should change for Florida condo safety subject to debate

Payton said his group believes it is important to wait until all the facts are in regarding the Surfside collapse before changing state laws and regulations regarding how condos.

"First, it is important to keep in mind that we do not yet know what precipitated the building's collapse," he said. "I expect multiple agencies encompassing both state and federal levels of government will conduct a forensic analysis. Until a report is released based on their findings, any conversation related to codes and standards is premature."

"Findings may implicate building maintenance, design flaws, code issues, poor workmanship quality or even product failure. If a code issue contributed to the building's failure, then a secondary analysis would be needed to determine if current codes address the issue. If not, then a code change would be in order."

Haber believes there are already some things that clearly need to change in terms of state regulations for how condos are built and, equally as important, how they are maintained.

For starters: "We have to take the decision-making on life safety matters out of the hands of the volunteer condo boards and into the hands of professionals," he said.

Building inspections should also become mandatory statewide for all oceanfront high-rise condos, "beginning somewhere between the first 10 or 20 years and every five years after that," Haber said. "And condo boards shouldn't get to ignore the engineers' reports and there have to be penalties if they don't act accordingly."

Butera said he believes waiting 40 years to do an initial re-inspection of oceanfront high-rise condos is much too long. "It should be continual and it should be periodic throughout the life of the building," he said.

Why some Florida buildings out-last others

If Florida's oceanfront high-rise condos have a shelf life of only 40 to 50 years, according to Neris and other experts, why does Europe have so many buildings that have stood for thousands of years?

"In America, we build for the cheapest solution, not the best," said Butera. "We don't build them to last forever. We build better, cheaper, faster."

One of the problems with trying to construct buildings as quickly as possible, Butera said, is the risk that general contractors don't give the concrete enough time to properly cure. "That makes the concrete less strong and more prone to failure," he said. "A lot of times, contractors will try to make up time by pouring more concrete than they should all at once."

That problem compounds if the building is then not properly maintained because they have been turned over to condo associations whose members don't see the value in repainting every three to five years or in being quick to make repairs.

"Even if a building is built correctly to code, if it's not properly maintained, it can be prone to premature failure," Butera said.

More qualified Florida building inspectors also needed

Changing the state's laws and regulations regarding the construction and maintenance of condos would be an important step, but it won't mean anything unless the state can also come up with funds to help counties and cities to hire more inspectors and building officials "that are either licensed architects or engineers," said Haber.

"We need more regulators, but a building official shouldn't be someone who just takes a test."

Perry agreed that a thorough examination of what caused the Surfside collapse needs to be done before drawing conclusions on whether laws should be changed.

That said, "even if it's only one condo that collapsed out of the many thousands we have in Florida, that's still one too many," said Perry. "Even if it's the rarest of occasions, I believe it was a preventable accident. I think we could require periodic inspections, but when and how often do they need to take place?"

"I also think the distinction needs to be made between general maintenance and safety requirements. I don't want to be the one to tell them when they need to paint and other cosmetic things. The other distinction that needs to be made is the proximity to salt air. We need to look differently at a condo building in Orlando, for example, as opposed to one that's in Miami Beach."

As a structural engineer, Neris said, "I would definitely recommend a statewide requirement for (periodic) inspections versus letting it be decided locally. The problem with condo associations is their motivation is to save on costs. But long-term failures can be the result of a combination of factors that includes deterioration because of a lack of maintenance."

Will Surfside's 'wake-up call' lead to meaningful action in Florida?

Eskamani voiced her hope that the Surfside collapse will be a wake-up call that can change the thinking of both state lawmakers as well as condo residents.

"I think Surfside has already changed the public's knowledge and acceptance about the need for proper condo maintenance and fees and what the money should go for. It would be a disgrace if the Legislature takes no action after this tragedy," she said.

"I am confident knowing our senators and how we operate that new state standards for condos will be developed," said State Sen. Tom Wright, a Republican whose district covers parts of the state's Atlantic coast. "I do believe in local home rule, but this is not one of those things that can be left to counties and cities to decide. The third week of September is committee week (for the state Legislature) and I expected this will be brought up then."



William Sklar is an attorney in West Palm Beach who was recently tapped to chair the Florida Bar's new Condominium Law & Policy on Life Safety Task Force, which was formed in the wake of the Surfside collapse.

"We're looking at several issues include life safety issues, inspections, reserve studies and the role of building officials," said Sklar. The task force's goal is to present its recommendations to the state Legislature by mid-September so that potential bills can be introduced at the next Legislative session in January.

Wright believes the Legislature has no choice but to address the state's current condo regulations immediately.

"My prediction is, if we don't do something to address this issue, prospective condo buyers in the future will ask, 'When was this condo built?' If the answer is that it was built in the early '80s or before, they'll say, 'No, thanks,'" he said.

Perry noted that many residents of older condominiums in Florida are retirees on fixed incomes. "We can't require them to do something they can't afford, but we also can't allow buildings to become unsafe. We don't want to require things that are not necessary."

Wright agreed that some may not be able to afford to continue living in a condo if new standards are adopted to require periodic inspections and timely maintenance and repairs.

Regardless, he said, "Safety has to be first."

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