

OP-ED

## Fixing Florida's aging condo mess after the Surfside collapse means changing the laws | Opinion

BY DAVID B. HABER

SEPTEMBER 10, 2021 11:59 AM



Residents from a 138-unit condo at 5050 NW Seventh St. in Flagami were forced to evacuate Aug. 9, 2021, after city officials deemed the building unsafe. DANIEL A. VARELA [DVARELA@MIAMIHERALD.COM](mailto:DVARELA@MIAMIHERALD.COM)



Only have a minute? Listen instead

Presented by TUNEIN [Live Sports, Music, News & Podcasts](#)

-04:05

TUNE IN

In the aftermath of the Surfside tragedy, all assumptions regarding the utility and sufficiency of the legal rights, processes and safeguards for condominium unit owners have been upended. Florida is entering uncharted territory in which high-rise coastal condominium buildings continue to age under the watch of volunteer board members.

The recent tragedy has caused scrutiny into the 40-year certification process, and the structural integrity of older buildings, especially waterfront properties. Currently, there are numerous shortcomings in the re-certification process, which itself is only applicable in Miami-Dade and Broward counties. Many buildings don't obtain their certification on time, with delays caused by infighting among board members and owners, including the politics relating to passing special assessments.

The Florida Bar Committee will soon be issuing a report and recommendations to the governor and Florida Legislature.

## **RECERTIFICATION AND REPAIRS**

My suggestions for strengthening the laws relating to structural matters include reducing the re-certification time frame to 15 or 20 years and require this statewide, from a licensed structural engineer with at least 10 years of experience; set time frames from the issuance of the report for commencing the repairs; change the Florida Building Code to require proper waterproofing with longer minimum warranty; remove the discretion of boards of directors on life safety repairs; prevent waiver of reserves for life safety components, and create a state or federal program for loans for these repairs, given that many of the older buildings have owners on fixed incomes.

One additional, and very controversial legal issue must be re-examined: condominium terminations, which would result in the demolition of older buildings.

Developers are looking to bulk purchase older buildings, knock them down and put-up new high-rises, given their locations, catering to the high demand for waterfront luxury condominium units. The appetite of developers seeking to find these older buildings to demolish has only increased in the past 18 months due to the influx of new Florida residents.

But what happens when a developer can't get the requisite owners' vote in favor of building — because the worse off the financial and/or physical condition of the building, the more likely it is that a unit owner will simply sell to the developer.

## **WHEN REPAIRS COST TOO MUCH**

Owners in these older condominiums are in a Catch-22, because they don't want to fix the building and/or can't afford to, but they also can't get the votes required of unit owners to terminate the condominium. The older the building, the more expensive the preventative maintenance required to properly protect the building and/or to remediate existing defects.

We need to figure out how to turn this situation around to avoid these buildings becoming more dilapidated and potentially dangerous. One potentially overlooked avenue of relief is the ability to terminate a condominium on the basis of economic waste. I suggest changes to the Condominium Act to facilitate these terminations, where appropriate, by capping (lowering) the percentage of ownership votes required to terminate a condominium on this basis, and to expand and clarify the criteria for economic waste terminations.

Expanded economic waste termination powers can avoid a standoff between those who want to stay in the building and not sell, and those who want to sell. While a building official can always close down the building and remove residents, the better way to address this situation is to make it economically viable for residents to sell and terminate the condominium where well-documented looming structural deficiencies require profound remediation that the membership simply cannot afford.

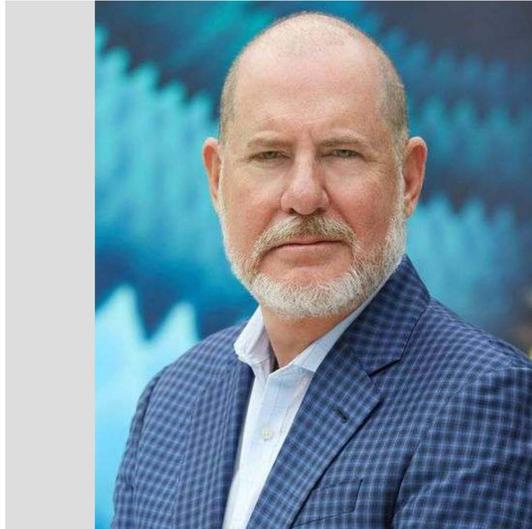
Economic waste termination rights should also include an expansion of procedures to ensure that residents get fair market value and are not left with low-ball offers from a potential redeveloper. What we cannot do is allow these stalemates to linger, and allow the buildings to become or remain unsafe, with residents living in danger. That serves nobody's interests.

To some, the concept of forced sale is un-American. But nobody can dispute that the

current state of affairs with older buildings simply cannot continue. It's clear to all and allow the buildings to become or remain unsafe, with residents living in danger. That serves nobody's interests.

To some, the concept of forced sale is un-American. But nobody can dispute that the current state of affairs with older buildings simply cannot continue. It's clear to all Floridians that the laws must change, and they must change in many different areas of the law to prevent more unsafe structures from further deterioration.

*[David B. Haber](#) specializes in condominium law and represents condominium associations. His other practice areas include construction, complex business litigation and real estate law.*



Haber