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# A New Era of Transparency?

CLOSING THE INFORMATION GAP

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s a result of the recent tragedy at Surfside, the Condominium Law and Policy on Life Safety Issues Advisory Task Force (the Task Force) was formed to provide detailed recommendations to Florida lawmakers. The Task Force recently issued comprehensive recommendations in its report dated October 12, 2021. The

Task Force's primary goal in recommending legislative action was to help the Legislature codify and regulate aspects of condominium governance relating to safety and long-term structural maintenance. An overarching recommendation of the Task Force was to provide comprehensive and uniform standards and requirements for inspections, reporting, and funding related to building maintenance and repair. These include recommendations relating to the authority of boards to make maintenance decisions, funding options and requirements to fund necessary repairs, compliance and remedies for unit owners, and specific responsibilities for the various parties tasked with ensuring the safety of condominium residents. The Task Force sought to balance the economic realities of operating a condominium and the need for uniform standards to ensure the safety of its constituents.

The Task Force noted that the current standards afford broad discretion to board members to maintain, repair, and replace necessary structural components that have a great impact on the safety and structural soundness of the building, with little to no requirements for disclosure of building conditions. Practitioners know that this can be a major issue because board members serve on a voluntary basis and often do not have the comprehensive understanding of necessary structural repairs that licensed professionals have. This article will highlight disclosure and transparency-related recommendations issued by the Task Force.



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Currently, there are limited requirements for tracking and reporting building maintenance in Florida. The only counties which address reporting requirements are Miami-Dade and Broward counties, which require condominium associations to complete a 40-year recertification process (with recertification to follow subsequently every ten years) based upon a mandatory inspection and report completed by a licensed engineer. Recently, in the

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aftermath of the Surfside tragedy, the cities of Boca Raton and Aventura implemented certain reporting requirements for condominiums. Previously, in 2008 the Florida legislature enacted a statute which required a condominium building inspection every five years under the seal of an architect. This inspection required an attestation of the architect or engineer as to the required maintenance, useful life, and replacement costs of certain mandatory components. However, not even two years later this statute was repealed due to the costliness of regular reporting.

The lack of transparency has resulted in a large information gap between association boards, the local government, and the unit owners. Where there is high board member turnover, there is a risk that institutional knowledge will suffer. Such turnover is not conducive to encouraging the importance of costly long-term repairs. However, boards that do not want to take action to address crucial maintenance priorities can become entrenched (often because owners are indifferent or unaware of looming problems). Unit owners are often reluctant to vote for increasing their monetary obligations, especially when the assessments are for future repairs that become necessary due to unobservable deterioration. Defects of this nature can be quite dangerous and costly. Moreover, remediation costs increase exponentially over time. Without full disclosure or understanding of why future funding (with the safety implications associated with same) is necessary, boards have a difficult job of convincing unit owners to provide funding for expensive but necessary future repairs.

To address this information gap, the Task Force outlined the following (summarized) recommendations:

### Developer Turnover Report

Florida Law already requires a developer to prepare an inspection report pursuant to §718.301(4)(p).<sup>1</sup> The Task Force recommended adding waterproofing to the list of mandatory components addressed in the statute. Further, developers should attest to the condition of the mandatory components. This attestation is important because it spreads accountability for the safety of the mandatory components. Later, the association can rely on the attestation of the developer as an admission or a material representation. Finally, the Task Force recommended that along with the turnover report described above, the Act be expanded to require (1) developers to establish detailed maintenance protocols for the mandatory components, and (2) associations to comply with such maintenance protocols until they obtain updated protocols.

### Association Reporting Requirements

The Task Force recommended that associations should also have mandatory reporting and inspection requirements. These would include the obligation for condominiums of three stories or more to obtain periodic structural and life safety inspections after turnover. The Task Force recommended establishing a standard template for building inspection reports and uniform qualifications for licensed



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professionals. They proposed that associations should be required to obtain or prepare such a report by December 31, 2024, and to obtain an updated report every five years thereafter.<sup>2</sup> While the prior law was repealed because of the “large expense burden,” requiring an updated report every five years will allow associations to conduct inspections frequently enough to address issues that can become serious safety risks.

### Local Government Reporting Requirements

Local governments often require and/or perform inspection reports for condominium buildings. Currently there is no requirement for local governments to share these reports with the association (subject to public records request rights), and the Task Force recommended mandatory disclosure by local governments.

### Website Requirements

Additionally, the Task Force recommended requiring associations operating condominium buildings containing 100 or more units to publish a website containing the official records. Presently this requirement only applies to those associations with 150 or more units. They recommend legislation requiring the website to be updated at least quarterly and for all reports to be distributed electronically.

### Transfer Disclosures

The Task Force recommended that any building inspection reports should be included in the list of docu-

ments which are provided to prospective buyers and be included among those documents triggering cancellation rights. The report also recommended changes to the mandatory frequently asked question and answer sheet.

The Task Force should be commended for their detailed and thoughtful recommendations. It is now up to the Florida Legislature to champion the cause of transparency, investigation, and disclosure requirements. Future legislation could require the engineering and reporting disclosures in a manner similar to existing mandatory association disclosures, such as the financial reporting disclosure requirements in Florida Stat. §718.111(13), with perhaps even more stringent consequences and deadlines. It is evident that there is a need to provide clear and uniform requirements to lessen the information gap afflicting associations throughout the state.

*This article is for informational purposes and is not intended to be and should not be taken as legal advice. ■*

<sup>1</sup> §718.301(4)(p) requires the developer to file a report under the seal of an architect or engineer outlining the replacement cost of certain mandatory components including the roof, structural components, fire safety components, elevators, heating and cooling components, plumbing, electrical components, pool & spa, seawalls, parking, drainage systems, paint of the building, and irrigation systems. The Task Force recommends adding waterproofing maintenance to this list as well.

<sup>2</sup> The Task Force recommends requiring this report to be uploaded to the website, as discussed below, no later than 10 days after the association receives same.

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