

Condo Insights

#52 New legislation affecting Southern New Jersey condominium associations

There are several new laws affecting community, condominium and homeowner's associations. The most significant features of the new laws which are relevant to most associations apply to structural inspections, reserve studies & funding and identification of key corporate decision-makers. These laws establish critical time frames for association compliance.

Structural Integrity Act

In January 2024 New Jersey Governor Phil Murphy signed into law the Structural Integrity Act. This law was enacted partly in response to the 2021 Champlain Tower South Condominium collapse in Florida in order to prevent a similar tragedy in New Jersey. The legislation is based on the National Public Policy Report on Condominium Safety published by Condominium Association Institute ("C.A.I."), the national trade organization for community and condominium associations.

This new legislation puts in place procedures for inspecting, evaluating and maintaining structural integrity and mandates that associations conduct structural integrity inspections, regular reserve studies, adequate reserve funding and that preventive maintenance schedules be prepared as part of the reserve studies.

Structural inspections are required for many but not all condominium associations. The need for inspections and evaluation are based on material of construction, not height of building. The inspection focuses on the primary load bearing systems (beams, columns and braces) because if any part of the primary load bearing system deteriorates and can no longer support the building, a collapse can occur. The structural inspection also includes evaluation of exterior balconies.

Inspections are required on a 15-5-5 cycle. For new construction, the first inspection is required within fifteen (15) years from the date of the original certificate of occupancy, or sixty (60) days after observable damage to the primary load bearing system. If an existing building is less than 15 years old, the first inspection is required within one (1) year of reaching 15 years. If an existing building is more than 15 years old, it must undergo a structural integrity inspection by the end of 2025. New associations that are conversions of existing buildings must have the structural integrity inspection report included with the public offering statement and must follow the appropriate inspection schedule based on building age. Thereafter, structural inspections are required every five (5) years.

The structural inspection must be conducted under the direction of a licensed professional engineer. The report includes the condition of the primary load bearing system, required maintenance or repairs, and when the next inspection is to be performed. The report must be provided to the local municipality and provided to association members. If there is observable damage to the load bearing system, a maintenance plan must be prepared, repairs must be performed, and a follow-up inspection must take place within 60 days. A unique aspect of the legislation is that it supersedes any limitations in the association Master Deed or Bylaws on board-authorized spending for repairs or corrective maintenance.

Capital Reserve Studies are required for almost all associations, exempting those with less than \$25,000 in common elements. The new legislation requires that associations undertake and fund a capital reserve study ("CRS") and include adequate reserve funding for repair/ replacement of common elements and facilities in the annual operating budget. If an association does not have a CRS, one must be prepared by January 2025. The legislation requires that reserve studies must be updated at least every five (5) years.

The CRS must include a 30-year funding plan with mandatory annual reserve contributions to ensure the association has adequate reserve funds available to repair or replace the association's capital assets, common elements and facilities without the need for special assessments or loans. The CRS must be prepared in conformity with National Reserve Study Standards and performed or overseen by a Reserve Specialist or licensed engineer or architect. Since the CRS must be updated every five years, emphasis is placed on the recommended funding level in these first five years. A potential for conflict exists between the engineer's recommended funding level and association boards that don't believe that the recommended funding level is necessary.

This new law will change how capital reserve studies are prepared by requiring preventive maintenance schedules including periodic structural and façade inspections, maintenance schedules, timing and costs. Associations should make sure that all future proposals for reserve studies align with this new law and include preventive maintenance and inspection schedules.

Many associations have long term asset maintenance and replacement plans but this law will formalize the practice. The objective is to make sure that condominium associations no longer have underfunded reserves, that multi-family residential buildings are regularly inspected and properly maintained. Condominium buildings in Cape May County can expect increased maintenance inspections and an increased priority for building maintenance. This new law is designed to ensure older condominium buildings are safe for residential occupancy.

Corporate Transparency Act

The Corporate Transparency Act ("CTA"), enacted to address international money laundering, tax fraud and financing for terrorism will also impact condominium associations in New Jersey. By January 2025, associations are required to file an annual report to the US Department of the Treasury Financial Crimes Enforcement Network (FinCEN). In addition to standard reporting information, associations will now be required to provide more detailed personal information about board members, members that exercise substantial control over association investments, or own more than 25% of the association's business interest. This applies to all board members, to association management and in some cases, to individual owners. CAI is challenging the applicability of this law in federal court, but no decision has been rendered to date, so compliance is required.

Association board members should familiarize themselves with CTA reporting requirements; identify all affected owners and collect information for each. Associations will have to report the legal name of all board members, birthdate, home address, and identifying number from a driver's license, state ID or passport. Associations may want to develop a record-keeping process to track information required for CTA reporting and filing obligations.

These reporting requirements go into effect January 1, 2025. There are stiff penalties for violating the Act. Noncompliance could result in civil penalties of \$500 per day, criminal penalties of up to \$10,000 and up to 24 months in prison. In most cases, associations will not be exempt from the reporting requirements under the CTA. Associations should consult with their tax advisor and attorney and proceed to fully comply with the Act's provisions. Required information can be submitted via the Financial Crimes Enforcement Network (FinCEN) website at www.fincen.gov/boi

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