

# Condo Insights

## #40 Structural Integrity Act

On January 8th, 2024 New Jersey Governor Phil Murphy signed into law S2760/A4384, commonly known as the Structural Integrity Act. This law was enacted partly in response to the 2021 Champlain Tower South Condominium collapse in Florida to prevent a similar tragedy in New Jersey. This new legislation puts in place procedures for inspecting, evaluating, and maintaining the structural integrity of certain residential condominiums and cooperatives.

The legislation requires that all condominium associations conduct structural integrity inspections, regular reserve studies, adequate reserve funding and requires preventive maintenance schedules be prepared as part of the reserve studies.

The new legislation is composed of several components and not all the legislation applies to all types of associations. The new legislation is divided into two categories—structural integrity and reserves. What the legislation mandates for structural integrity and reserves are not the same for all associations.

Structural integrity inspections are required for many but not all condominium associations. The need for inspections and evaluation are based on type of structure, not height of building. Mid-rise and high-rise buildings are required. Most townhome-type associations are excluded. Apartments and single-family homes are excluded.

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.

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 within two (2) years. 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.

The structural integrity inspection must be conducted under the direction of a licensed professional engineer. The report must include the condition of the primary load bearing system, required maintenance or repairs and when the next inspection is to be performed. If there is no visible damage, the next inspection must occur within ten (10) years. 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 sixty (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 structural repairs or corrective maintenance. In the interest of transparency, the report must be provided to association members.**

A few interesting points to note: the law provides immunity for structural inspectors. That may pose a concern because structural inspections of existing buildings can be challenging to perform, and aspects of the inspection are based on visual observations. Even the best inspectors are not perfect and may mis-identify or flat our miss important items in a post-occupancy structural inspection.

The report must be provided to the local municipality. Local construction officials are not required to be licensed engineers, and many are part time employees. This new law may significantly increase the volume of work for municipal construction offices, especially in Cape May County municipalities with many older condominium buildings.

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Prior to this new law, associations were not required to fund reserves. The new legislation requires that all associations undertake and fund a capital reserve study (“CRS”) and include adequate reserve funding for repair and replacement of common elements and facilities in the annual operating budget. The capital reserve study must be prepared in conformity with National Reserve Study Standards and performed or overseen by a Reserve Specialist or licensed engineer or architect.

The CRS must include a 30-year funding plan 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 (with a few exceptions). If an association does not have a CRS, one must be prepared within one (1) year.

If an association has not obtained a reserve study within five years of January 8, 2024, the association must get one on or before January 8, 2025. The legislation requires that CRS be updated at least every five (5) years. This aspect of the new legislation applies to all associations (except those that have less than \$25,000 in common area capital assets).

The new legislation also defines the timeframes for associations to reach the level of adequate funding. If the association is obligated to maintain or replace an asset, the association must set aside adequate funds for the item. If the existing balance in the reserve fund is inadequate, the association must increase the amount of funds it is setting aside for asset replacement. The goal is to have the association’s operating expenses, periodic maintenance and reserve fund needs included in the regular annual budget that is financed by member condo fees. While the law (and good reserve funding practice) has the goal of trying to avoid special assessments and loans, nothing in the law prohibits either.

The new law expands the scope of Capital Reserve Studies to require additional information related to preventive maintenance, including periodic inspections, maintenance schedules, timing, and costs. Association board members should make sure that new proposals for reserve studies align with this new law and include preventive maintenance schedules.

Expect that the State of New Jersey Department of Community Affairs will introduce rules and regulations for multi-family dwellings in New Jersey to guide associations in compliance with this new law. **Many local associations have long term asset maintenance and replacement plans, but this law will formalize the practice. Condominium buildings in Cape May County can expect increased maintenance inspections and an increased priority for building maintenance. The objective is for the older condominium buildings in our area to be safer buildings.**

*Jim Yost owns Elite Management and Advisory Services, LLC and is managing partner for Ocean Property Management Corporation, based in Wildwood. The firms manage numerous community, condominium and homeowner associations in southern New Jersey. He can be reached at [yostpmc@comcast.net](mailto:yostpmc@comcast.net). Past articles are available online at [www.oceanpropertymgmt.com](http://www.oceanpropertymgmt.com).*

*Karim Kaspar, Esq. is Senior Counsel with Lowenstein Sandler LLP. He serves as general counsel to numerous community and condominium associations throughout New Jersey. He specializes in complex commercial litigation and real estate matters and has been active and instrumental in the firm’s pro-bono activities. He can be reached at [kkaspar@lowenstein.com](mailto:kkaspar@lowenstein.com).*

