

**FLORIDA CONDO & CO-OP SAFETY BILL PASSES IN
A SPECIAL SESSION OF THE LEGISLATURE**

By: Christopher J. Shields, Esq. and Vanessa Fernandez, Esq.

“No man’s life, liberty, or property are safe while the Legislature is in session” is a quote attributed to either Mark Twain or Gideon J. Tucker depending on who you ask. The same now apparently applies to when the Florida Legislature is in Special Session. In a very abbreviated Special Session in May of this year, the Florida Legislature unanimously passed the Senate Bill 4D, “Building Safety Act,” in less than 72 hours. The bill passed in the Senate on May 24th, the House on May 25th, and was signed into law by Governor DeSantis on May 26th.

The Building Safety Act applies only to condominiums and cooperatives. The impetus for this legislation was the collapse of Champlain Tower South on June 24, 2021, in Surfside, Florida, where ninety-eight (98) inhabitants lost their lives. The following is an overview of the key points of the new law:

1. Milestone inspections for condominium and cooperative buildings of three (3) stories or more. If a building is three (3) stories or more in height, a “milestone” inspection is required and must be performed by a licensed architect or engineer. For those who followed various iterations of the bills that were floating around the Florida Legislature earlier this Spring, you may recall there were versions of the bills which would only govern condominium or cooperative buildings more than three (3) stories and would not necessarily apply to buildings of three (3) stories or less. But the new Section 553.899 of the Florida Statutes will now set timelines for mandatory structural inspections for condominium and cooperative buildings requiring milestone inspections for buildings that are three (3) or more stories in height.

Interestingly enough, the Legislature failed to define “three (3) stories or more” and gave no indication as to whether all building floors (including for example any parking garage) would be counted or whether building floors which are located below ground or only those lying above ground would be counted. Even more perplexing is language in the new law which specifically states that the milestone inspection “does not apply to a single family, two-family or three-family dwelling with three or fewer habitable stories above ground.” (NOTE: the terms “two-family” or “three-

family” are not defined anywhere in the new law). Seemingly, a two-family or a three-family dwelling with either ground floor parking and three (3) habitable floors would be exempt as would a building with below ground parking and three (3) habitable floors. I do not imagine this is the result the Legislature intended for some of the States smaller condominium or cooperative buildings.

As for the timelines for these milestone inspections, the inspections must be performed within thirty (30) years from the date of certificate of occupancy (“CO”) was issued for the condominium or cooperative building and every ten (10) years thereafter. If the building is within three (3) miles of the coastline as that term is defined in Section 376.031 of the Florida Statutes, then it must be performed within twenty-five (25) years of the CO date. The effective date of the law is phased requiring buildings that received a CO before July 1, 1992, to complete the first milestone inspection by December 31, 2024.

Lastly, regardless of the height of the building, the statutes will now require a developer to provide a milestone inspection report at turnover even though the association is not required to obtain a future report where the building is less than three (3) stories.

2. Structural Reserve Study. The new law lists categories which must be addressed in the milestone inspection and requires the association to distribute a copy of the milestone inspection report to all unit owners, even if the report indicates the building has a clean bill of health. If the report indicates repairs are needed, the association is required to commence such repairs within 365 days after receiving the report.

The law creates a new phrase “structural integrity reserve study” and requires reserve studies be maintained for fifteen (15) years as part of the association’s official records. For buildings of three (3) stories or more which are not otherwise exempt, the initial structural integrity reserve study must be completed by December 31, 2024, and must be performed every ten (10) years thereafter.

3. Waiver of reserves. After December 31, 2024, for buildings of three (3) stories or more, the membership will now be prohibited from voting to waive or reduce reserves for the items listed in the structural integrity reserve study. The structural integrity reserve study must address: roofs, load bearing walls, floors, foundations, fire prevention and fire protection systems, plumbing, electrical systems, waterproofing and exterior paint, windows and any other item which exceeds \$10,000 of deferred maintenance replacement cost.

The Building Safety Act raises a host of questions, the least of which is whether all aspects of this new law will apply to all condominiums or simply those created after May 26, 2022, the date the Governor signed it. There are aspects of the new law that seemingly apply to all condominium and cooperative buildings over three (3) stories in existence on or before July 1, 2022. Other aspects remain unclear, particularly those prohibiting unit owners to waive or underfund reserves for items identified in the Structural Reserve Study.

As a general rule, a substantive amendment to the statutes applies prospectively (so as not to run afoul of any Constitutional rights under the Contract Clause), unless there is a clear manifestation of legislative intent for the statute to apply retroactively. Legislative changes that can be categorized as remedial or even procedural, on the other hand, apply retroactively to the extent that they do not take away or create new vested rights. New laws which take away vested rights (in this case, the right under existing law and more importantly existing provisions within an association’s governing documents allowing the members to vote to waive reserves) may be considered substantive changes rather than simply procedural or remedial amendments.

There are serious questions as to whether some or all parts of the new law will apply to all condominium and cooperative associations if the governing documents of those associations do not contain what is known as “Kaufman language” which subject the communities to Florida law, the Condominium Act, or the Cooperative Act “as amended from time to time.” Kaufman v. Shere, 347 So. 2d 627 (Fla. 3rd DCA 1977). However, because the law has been passed as a matter of great public interest in the wake of the Champlain Tower South collapse, an association that fails to comply with the more immediate requirements may find itself in a heap of trouble. A statute on the books is presumed valid and given effect until it is judicially declared unconstitutional or unenforceable. Maison Grande Condominium Association Inc. v. Dorten, Inc., 600 So. 2d 463 (Fla. 1992).

For now, everyone who lives in a condominium should understand that this new law “may be coming to a theater near you” and it should be on every condominium and cooperative association’s radar. For those of you who have tracked the fallout of similar laws in the past, including the State’s attempt to impose limits on the number of consecutive terms a member may serve on the board and the waiver of retrofitting fire sprinkler systems, we can expect there will be a call in the near future for the Florida Legislature to pass bills to clarify any murky issues that may be lingering in the Building Safety Act.

Note that according to the new statutes, all condominium and cooperative associations that exist on or before July 1, 2022, will be required to provide specific information to the Division of Florida Condominiums, Timeshares, and Mobile Homes (“Division”) by January 1, 2023, including:

1. The number of buildings on the condominium or cooperative property that are three stories or higher in height.
2. The total number of units in all such buildings.
3. The addresses of all such buildings (and not the addresses of the management companies for the same).
4. The counties in which all such buildings are located.

Because these requirements are procedural in nature and do not infringe on any vested rights under the existing statutes or an association’s governing documents, the requirements very likely apply prospectively and retroactively to all condominium and cooperative associations in existence on or before July 1, 2022. It would behoove all such associations to comply with the requirements and provide the foregoing information to the Division, using the form to be posted on the Division’s website for the same, prior to January 1, 2023.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

Christopher J. Shields has been a Partner with Pavese Law Firm for over thirty years and is Board Certified by the Florida Bar in both Real Estate Law and Condominium and Planned Development Law. Vanessa Fernandez is an experienced attorney who also specializes in community association law with Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 334-2195; Fax: (239) 332-2243. To view past articles, please click “Publications” on our firm website.

Pavese Law has five attorneys Board Certified in Condominium and Planned Development Law; three of only thirty attorneys in the State of Florida who are Board Certified in both Real Estate Law and Condominium and Planned Development Law; and one of only two attorneys in the State of Florida who is Board Certified in both Construction Law and Condominium and Planned Development Law.

We are a full-service law firm and capable of handling all our legal needs.

Firm Practice Areas include:

- Agricultural
- Banking and Finance
- Bankruptcy
- Business and Corporate
- Civil Litigation
- Condominium and Homeowners' Association Law
- Construction
- Employment
- Environmental and Water
- Estate Planning, Probate and Trusts
- Land Use and Local Government
- Marital and Family
- Real Estate

Visit us on the web at www.PaveseLaw.com.



**PAVESE
LAW FIRM**
est. 1949

MAIN OFFICE
FORT MYERS
239.334.2195

BRANCH OFFICES
CAPE CORAL
239.334.2195

WEST PALM BEACH
561.471.1366

PaveseLaw.com