

# JULY 2021

## *Community Associations Newsletter*

### **Surfside Florida – Let's Focus on Reserve Studies**

**By Leslie Brown and Nicole Williams**

The tragic, sudden collapse of the Champlain Towers South condominium building in Surfside, Florida has rocked the community association industry to its core. Architects and engineers will be analyzing the structural failure for years. Legislators may be pressed to implement stricter standards for high-rise buildings. As community association industry professionals and residents, we cannot help but wonder whether something similar can happen in the high rises we represent, manage, serve, and live.

One area that has gotten a lot of attention since the collapse are reserve studies and reserve funding. Florida has unique statutory requirements in this regard. While formal reserve studies are not required to be conducted in Florida, condominiums are statutorily obligated to set aside reserve funding for roof replacement, building painting, pavement resurfacing and any other capital expense greater than \$10,000 and maintain a reserve schedule for repair and replacement of major components. The “40-year certification” requirement that is also getting a lot of attention is specific to condominiums in Miami-Dade County. In that jurisdiction, the condominium building must be inspected for the purpose of determining the general structural condition of the building and the general condition of its electrical systems every 40 years.

Our state and local jurisdictions have their own sets of requirements with respect to reserve studies and reserving funding for community associations.

**Virginia.** Both the Virginia Condominium and Property Owners’ Association Acts require community associations to conduct a reserve study every five (5) years, unless the governing documents impose a more stringent requirement. Additionally, both Acts require Boards to review the study *on an annual basis* to determine if their association is funding their reserves at appropriate levels.

Due to a 2019 change in the law, Boards must also disclose information about reserve funding levels in the budget. These disclosures include:

- the current estimated replacement cost and estimated remaining useful life of the Association's capital components;
- the total amount of cash currently set aside for reserves (repair, replace or restore capital components) and the amount budgeted for contribution to the reserve fund for the coming fiscal year;
- a statement outlining how reserves are being funded and the extent to which the Association is funding its reserve obligations consistent with the reserve study; and,
- a statement of the amount of reserves recommended by the study and the amount of cash, in fact, set aside for reserves.

Both Acts require associations to provide a copy of the budget to the ownership and to include a copy of the budget in the disclosure materials for contract purchasers.

To assist Boards and managers, the Virginia General Assembly required the Common Interest Community (CIC) Board to publish guidelines for the preparation of reserve studies. These guidelines are available on the CIC Board website at [www.dpor.virginia.gov/Boards/CIC-Board](http://www.dpor.virginia.gov/Boards/CIC-Board) under "*Guidelines for the Development of Reserve Studies for Capital Components*". The Guidelines provide a lot of information about why reserve studies are necessary for good association governance, the basic types of reserve studies, and what should be included in the study. Please also refer back to our [October 2019 Client Alert](#) for our insights on how to present reserve budgeting information pursuant to these new requirements.

**Maryland.** Both the Maryland Condominium and Homeowners Association Acts require that association budgets include a line item for reserves. For condominium resales, a statement must also be included with a summary of the most current reserve study report as well as a statement of "the status and amount of any reserve or replacement fund, or a statement that there is no reserve fund." Under Maryland case law, information disclosed in the resale documents is subject to the Maryland Consumer Protection Act, and, therefore, cannot be misleading. As such, it is important to ensure that the disclosure documents regarding the current budget and condition of the building accurately depict the association's financial health and condition.

Maryland does not mandate that reserve studies be conducted for community associations, except for associations in Prince George's County as of October 1, 2020 and in Montgomery County starting on October 1, 2021. Both the Maryland Condominium and Homeowners Association Acts were amended to require associations in Prince George's County to obtain a reserve study once every five (5) years and fund reserves in accordance with that study. The reserve study must be prepared by a person who has prepared at least thirty (30) reserve studies within the last three (3) years; someone who has a bachelor's degree in construction

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management, architecture, engineering or equivalent experience and education; holds a license from the State Board of Architects or the State Board for Professional Engineers; or is currently designated as a reserve specialist by Community Association Institute (CAI) or the Association of Professional Reserve Analysts. Please note that community associations in Prince George's County must have a reserve study conducted before October 1, 2021 if it has not had one conducted on or after October 1, 2016.

Montgomery County will follow suit come October 1, 2021 with nearly identical legislation to take effect in both the Maryland Condominium and Homeowners Association Acts pertaining to associations in Montgomery County. Please refer to our [May 2021 Maryland Legislative Update](#) on the specific reserve study requirements for Montgomery County associations.

**District of Columbia.** Under the D.C. Condominium Act, community associations have the power to adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners, but there is no statutory obligation to conduct a reserve study or fund reserves. However, express language in the legal documents may require such studies or funding. For condominium resales, a statement must be included with the amount in the projected budget as a reserve for repairs and replacement (or a statement that there is no amount).

Mayor Bowser recently announced [enhancements to safety reviews](#) for multifamily and commercial buildings due to the Surfside Florida and 916 Kennedy Street NW collapses. These actions include:

- Reviewing all active construction projects by 10Square Development and Beck Vissat, the property owner of 916 Kennedy St NW, to ensure compliance with D.C. Code;
- Drafting an administrative bulletin and/or legislation requiring all building owners and engineering firms to report and notify DCRA of unsafe structural conditions – proactively identifying buildings before they become unsafe sites;
- Legally requiring multifamily residential building owners to file with DCRA structural assessment reports and remediation plans, drafted by a licensed engineer, for any repairs to unsafe structural conditions prior to permit application;
- Digitizing special inspections conducted by private companies and engineers-of-record with real-time tracking of periodic and continuous inspections – ensuring potential safety issues are caught quickly;
- Creating training for plan reviewers to refresh and instill knowledge on shear wall construction;
- Retroactively reviewing for adequate shear wall designs in all new, multifamily, light-framed wood-construction buildings permitted within the District over the last three years starting with buildings certified by FMC & Associates; and

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- Researching and procuring engineering software to model, perform advanced and complex structural analysis, and standardize structural reviews in critical building design elements.

**West Virginia.** Like in D.C. and Maryland, there is no statutory obligation to conduct a reserve study or fund reserves in West Virginia, but such obligations may be contained within the legal documents. Under the West Virginia Uniform Common Interest Ownership Act, community associations have the power to adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from owners. For resales, a statement must be included containing the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects.

**CAI Best Practices.** The Community Associations Institute (CAI), the trade organization representing the interests of the community association industry, recommends that community associations conduct regular reserve studies to determine the appropriate amount of reserves needed to fund replacement costs and the most useful funding mechanism for their reserves. Associations should have their reserve studies updated on a frequency that allows for the reserve components and funding plan to be adjusted in the best interests of the association or accordance with local statutes. Associations should review the reserve study periodically to ensure the information presented is accurate and updated. Associations should also consult a qualified reserve study professional to determine the best reserve funding plan or combination of plans for the association. For communities that are more than 30 years old, Boards should consider investigating the possibility that other experts, such as a structural engineer, may be needed in addition to a reserve specialist for the long-term viability of the reserve components.

*If your community has any questions about reserve studies, reserve funding, or the implications of the Champlain Towers South collapse, please do not hesitate to contact one of our community association attorneys.*

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