

## Your condo questions answered: What buildings are required to have 40-year inspections?

By LOIS K. SOLOMON, JUL 06, 2021

Many of us live in high-rise buildings in South Florida. And even if we don't, we have to wonder about the condition of our apartments, condos and homes after the Surfside catastrophe.

We asked construction specialists and attorneys about the questions we should all be asking about the condition of our living spaces and what kinds of updates they need as they deteriorate from heat, humidity, hurricanes and climate change.

**Q. “Are high-rise hotels and motels, office buildings, tall-spired churches, and nonprofit retirement CCRC independent living residences (like John Knox Village), as well as assisted-living and critical care residence high-rise buildings subject to the Florida 40-year structural inspection requirements?” – *Ben Gooden***

**A.** According to Fort Lauderdale attorney John Uustal, structural inspection requirements in Broward County apply to all buildings, except for U.S. government buildings, state of Florida buildings, buildings built on Native American reservations, school buildings that fall under the jurisdiction of the Broward County School Board, one- and two-family dwellings, and minor structures under 3,500 square feet.

In Miami-Dade County, 40-year recertification requirements also apply to all buildings, except single-family homes, duplexes, non-residential farm buildings, and minor buildings or structures that have an occupant load of 10 or less and 2,000 square feet or less, he said.

Palm Beach County does not currently have any ordinance that requires recertification of high-rise structures. But, “in light of the Surfside tragedy, officials have reported they are in the process of reviewing their rules and regulations.”

**Q. “Is there any website that lists the reports or determinations of violations and related warnings of all those buildings in Florida subject to the 40-year structural status requirements, and whether they are in compliance making required repairs and improvements to fix major damages that affect the life of the structures and the safety of residents?” — *Ben Gooden***

**A.** Unfortunately there’s no such website, Ustal said.

**Q. What kinds of questions should condo owners, likely with little knowledge of building construction, be asking now?**

**A.** Ask about the age of your building, when the last inspection was and what kinds of repair work are planned in the near future, said Boca Raton attorney Peter Sachs, who is certified in condominium and planned development law. You will also want to know how much money is in the building’s reserve fund and if and when an extra financial assessment is coming, he said.

You have the right to inspect your building’s records, which would include finances and repair work. Florida law requires that condos maintain their official records for seven years.

**Q. “In light of the collapse, what advice would you give to homeowners’ association members concerning their duties to the unit owners? Would the HOA members typically have insurance which would cover them by the type of lawsuits you expect may be filed? Given what we know about the Champlain Tower collapse, do you foresee that unit owners of other pre-2002 condos who sell their units will have new disclosure requirements to prospective buyers?” —*Denny Doyle***

**A.** According to Fort Lauderdale attorney John Ustal, HOAs need to take precautions now to prevent another catastrophic incident in Florida.

“This danger may have been less foreseeable before the collapse of the Champlain Tower, but not anymore,” Ustal said. He said each association should examine its insurance policy and make sure it is “as broad a policy as possible.” Disclosure requirements revealing the condition of a unit to a prospective buyer remain unchanged,

but buyers are going to be more alert to structural issues, he said. “Hiding a dangerous condition, or lying about it, is not just illegal, it’s immoral,” he said.

**Q. Who’s at fault when there’s a serious structural problem in a building? Is it the architects, the builders, the engineers, the inspectors or city officials? Or all of the above?**

**A.** The architect, builder and engineer are all potentially culpable, as is the condo board if they do not act to fix the problem, Sachs said.

He said the architect would be responsible if there is a serious design flaw, and the engineer if the calculations, supervision or drawings are deficient. The builder would be to blame if corners were cut on materials or if construction failed to comply with the building code. The builder may also be liable for the failings of the architect or engineer. The board, too, has obligations to residents, he said.

“The board has a fiduciary duty to act in the best interests of the unit owners. If the board is negligent and fails to act, or unduly delays, it may be held liable,” Sachs said. But city officials are off the hook, according to Sachs.

“The city officials are protected by the doctrine of sovereign immunity,” he said. “Barring criminal conduct (the building official accepted a bribe to look away from a potential problem), it is highly unlikely that a city or its employees would be held legally responsible.”

**Q. How often should structural engineers inspect high-rise buildings?**

**A.** Miami-Dade and Broward require inspections when a building turns 40, but there’s no similar mandate in the rest of the state, Sachs said.

The boards that supervise the buildings should take the initiative and conduct a thorough inspection at least every 10 years, and more often is better, said Yaniv Levi, president of Coast to Coast General Contractors in Hollywood.

“It would behoove the association to do it yearly or bi-yearly,” he said. And he recommends the building get a new coat of paint, which also serves to weatherproof it, every seven to 10 years.

**Q. How quickly should buildings fix leaks and other water intrusions?**

A. Immediately, Levi said. “As soon as the leak is identified, they should find the source of the intrusion,” he said. “If you catch it early, it won’t develop into something major.”

**Q. How can I find out if my building was constructed under the highest safety codes?**

A. If it was built in 2002 or later, you should have the best building codes or close to it. If your building was constructed before 2002, it likely does not meet the highest standards unless it was damaged by a storm and had to be upgraded.

After Hurricane Andrew in 1992 mowed down entire blocks of cheaply built houses, Florida adopted a statewide building code that has become a national model. So when Hurricane Wilma struck Fort Lauderdale 13 years later, new downtown buildings, such as the 42-story Las Olas River House, held up well. Older buildings constructed before the building code sustained severe damage.

**Q. What should owners do if they believe their board is ignoring a safety issue?**

A. You should ask to have the issue brought up at the next board meeting, Hallandale Beach attorney Larry Tolchinsky said. “Get it on the record that the board is ignoring the issue,” he said. “Thereafter, file a lawsuit against the board.”

Boca Raton attorney Guy M. Shir agreed that you may need to take matters into your own hands. Call the local building or code enforcement department to report your concern, and put it in writing, Shir said. And if you can afford it, you may want to hire your own engineer. “In the end,” Shir said, “it’s (your) property, investment and life/safety issues.”

**Q. Should condos have rainy-day accounts to pay for property improvements?**

A. There’s often resistance from condo owners when a board of directors wants to add to the monthly maintenance fees, said West Palm Beach attorney Michael Gelfand, who is certified in condominium, planned development and real estate law.

“The board is caught between irreconcilable goals: perfect safety, which is impossible, and the owners not wanting their assessments to go up,” he said.

Condo associations are required by law to budget for reserve accounts for repairs of significant components, such as painting/waterproofing, roofs and paving, but frequently owners vote down these budgets as well as expensive structural work, Gelfand said.

These repairs are often expensive. In emails released by the town of Surfside, an engineer said Champlain Towers South, the collapsed building, needed to spend about \$16 million to repair cracked columns and crumbling concrete.

The loan meant owners at Champlain Towers South were facing payments of anywhere from \$80,000 for a one-bedroom unit to about \$330,000 for a penthouse.

Beyond the legally required reserve accounts, boards of directors take an assortment of approaches. Some have no reserves at all, while others have accounts dedicated to repairs needed every five to 10 years, said Mike Ryan, a Fort Lauderdale attorney and mayor of Sunrise.

“Some condos cater to people with fixed incomes. It’s difficult for them to suddenly get hit with an assessment,” Ryan said. “It’s up to the board how they want to handle this. It’s wise for them to put aside money. If you defer too long, it becomes too costly.”

The best strategy for the condo board is often to take the monthly maintenance fees and set aside some of that money for a rainy day fund, he said. This will lessen the financial impact on individual owners when a sudden major repair is needed and the board must ask each homeowner for money.

### **Q. What if an owner can’t afford the assessment?**

**A.** “It’s like a lifeboat,” Gelfand said. “If you can’t pull your weight, you’re off.” The association may foreclose on your unit. Otherwise, their accounts will run a deficit and they won’t be able to pay the bills.

Sometimes the association will borrow money from a bank to pay for these large expenditures, Tolchinsky said. “For those unit owners that can’t afford to pay, the association will likely spread the payments over time,” he said. “Up to 10 years in some cases.”

**Q. “We moved from Massachusetts to the Lotus development in West Boca in June 2020. Since we made our deposit in March 2019 the market value of our home is up 86%, due to constant price increases.**

**I’m wondering if enough owners will now start selling their high-rise condo units that the values of these units will drop significantly. At the same time, will the prices of semi-attached condos, or low-rise units increase significantly? I can see a number of owners moving to what they will now perceive as ‘safer’ housing. I can also see a number of snowbirds deciding to sell before prices drop, then renting for the season or buying a winter home in low-rise or garden-style units.” – Arthur Missan**

**A.** Ken Johnson, a real estate economist at Florida Atlantic University, said he does not anticipate significant effects on prices because of the Surfside collapse. He said buyers likely will perceive the collapse as a freak accident that’s unlikely to be repeated.

“I expect to see an increase in the demand for satisfactory property inspections contingent upon closing,” he said. “However, I do not see any price impact due to this horrible tragedy. Most know that this sort of thing is unlikely to ever happen again. As for a moving strategy, I don’t really see one with the average cost of a move, all things considered, being between 10% and 20% of selling price.”

**Q. In terms of safety, is it better to live on a high floor or a low floor?**

**A.** “In my personal opinion there are risks in both cases,” Tolchinsky said. “Living on the ground floor can have flooding issues. Perhaps issues with crime. Higher floors take longer to escape from the building and they have wind issues.”

**Q. Is it going to be harder to find concrete repair firms now that everyone is thinking about these questions?**

**A.** “Perhaps, but my belief is the collapse was more complicated than just issues related to concrete repair,” Tolchinsky said. “Certainly, the cost of having a firm perform these repairs is going to skyrocket. This is based on the level of data and certifications that will likely be needed to be provided to boards and governmental agencies to perform this work. Also, the high demand for building materials and the lack of skilled workers given the tight labor market will make it harder to find concrete repair firms.”