



PERSPECTIVES

**Florida Statute
2023-203:
A Comprehensive
Look at Building
Safety
Regulations and
Florida Milestone
Inspections**

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

FLORIDA STATUTE 2023-203: ENSURING BUILDING SAFETY IN THE WAKE OF TRAGEDIES

It often takes a crisis for society and government to react. Whether it be seat belts, smoking, or building safety, unfortunately, catastrophe can move the needle toward addressing public safety issues. This paper explores the events leading up to Florida statute 2023-203, the steps that impacted owners/developers/managers can take to ensure compliance, and how experts can help.

THE CATALYSTS: TRAGIC BUILDING COLLAPSES IN FLORIDA'S HISTORY

On August 5, 1974, at 10:24 AM (1), a federal office building housing the US Drug Enforcement Administration (DEA) Miami Field Division office in downtown Miami, Florida collapsed after the roof caved in, causing the deaths of seven DEA employees and injuries to 15 others.

The collapse led to Miami-Dade County's mandatory 40-year recertification program. The program aimed to avoid a similar collapse (2). After an examination of the six tons of rubble left by the collapse, it was concluded that concrete buildings in South Florida have risks, including salt in the aggregate rock used when making concrete that can corrode reinforcing steel due to the area's humid climate and salty air. This corrosion can expand and crack the concrete, leaving rebar to lose contact with the surrounding material and reducing the concrete's ability to withstand tensile forces (3). Thereby increasing the risk of failure?

In 1981, a "five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more." (4) In response to this tragedy, the Florida Legislature instituted threshold building inspections, requiring licensed "special inspectors" to conduct inspections for all threshold buildings (5). A threshold building, as defined by the Florida Building Code and in accordance with Florida Statute,

is any building which is greater than three stories or 50 feet (15 240 mm) in height, or which has an assembly occupancy classification that exceeds 5,000 square feet (464.52 m²) in area and an occupant content of greater than 500 persons. A special inspector is a licensed architect or registered engineer who is certified under chs. 471 or 481, F.S., to conduct inspections of threshold buildings.

In 1992, Hurricane Andrew exposed limitations to the Florida system of local codes. The hurricane destroyed many structures that were allegedly built according to the strongest codes at the time. Florida's governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 legislature authorized implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002 (6). The current edition of the Building Code is the seventh, which is referred to as the 2020 Florida Building Code. The eighth edition of the Florida Building Code will go into effect statewide in Florida on January 1, 2024.

THE EVOLUTION OF BUILDING SAFETY REGULATIONS IN FLORIDA

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. Mandatory inspections of existing condominium buildings were once required by Florida law, but the law was repealed shortly after enactment. In 2008, the legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of the common elements every five years by an engineer or architect licensed in the state (7). A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association (8). This provision was repealed in 2010 (9).

THE CHAMPLAIN TOWERS SOUTH COLLAPSE: A “WAKE-UP CALL”

On June 24, 2021, at approximately 1:22 AM EDT, Champlain Towers South, a 12-story beachfront condominium in the Miami suburb of Surfside, Florida partially collapsed, causing the deaths of 98 people. Four people were rescued from the rubble, but one died of injuries shortly after arriving at the hospital (10). Eleven others were injured (11). Approximately 35 were rescued the same day from the un-collapsed portion of the building (12), which was demolished 10 days later.

A contributing factor under investigation is long-term degradation of reinforced concrete structural support in the basement-level parking garage under the pool deck, due to water penetration and corrosion of the reinforcing steel. The problems had been reported in 2018 and noted as “much worse” in April 2021. A \$15 million program of remedial works had been approved before the collapse, but the main structural work had not begun. Other possible factors include land subsidence, insufficient reinforcing steel, and corruption during construction (13)(14)(15). The National Institute of Standards and Technology (NIST) is investigating almost two dozen potential causes for the collapse. It is likely they will determine several factors that happened simultaneously to cause the collapse (16).

SENATE BILL 4-D: A STEP TOWARD ENHANCED BUILDING SAFETY

During the Special Session of the Florida Legislature in 2022, Senate Bill 4-D introduced by Senator Boyd provided building safety inspection requirements for condominium and cooperative association buildings, increased the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revised the requirements for associations to fund reserves for the continued maintenance and repair of such buildings (16). The bill ultimately became law.

Regarding safety inspections for a building, the Act required a condominium or cooperative association building that is three or more stories in height to have a “milestone inspection” of the buildings’ structural integrity by an architect or engineer when a building reaches:

- 30 years of age, and every 10 years thereafter, or
- 25 years of age, and every 10 years thereafter if the building is located within three miles of a coastline.

UNDERSTANDING THE PROVISIONS OF FLORIDA STATUTE 2023-203

Eventually, Florida enacted 2023-203, otherwise known as a “clean up bill” which further defines the milestone inspections including, but not limited to, the following:

- Revising the circumstances under which community association managers or management firms must comply with a specified provision.
- Revising the definition of the terms “milestone inspection” and “substantial structural deterioration.”
- Revising who must have milestone inspections performed for buildings.
- Revising the deadline for milestone inspections of certain buildings.
- Authorizing local enforcement agencies to make certain determinations relating to milestone inspections after a building reaches a specified age.
- Authorizing local enforcement agencies to extend deadlines for milestone inspections under certain circumstances.
- Authorizing local enforcement agencies to accept certain inspection reports under certain circumstances.
- Deeming the inspections relating to such inspection reports a milestone inspection for certain purposes.

- Revising costs that condominium and cooperative associations are responsible for.
- Revising requirements relating to written notice of required inspections.
- Requiring architects or engineers performing milestone inspections to submit a specified progress report to a local enforcement agency within a specified timeframe under certain circumstances and specifying that associations must distribute copies of certain inspection reports within a specified timeframe and in a specified manner.
- Authorizing municipal governing bodies to adopt certain ordinances relating to association repairs.
- Amending s. 718.103, F.S.; defining the term “alternative funding method.”
- Revising the definition of the term “structural integrity reserve study.”
- Revising requirements relating to budget meetings.
- Revising condominium association reserve account requirements.
- Revising requirements relating to waiving reserve requirements or providing less reserves than required by law.
- Revising requirements relating to using reserve funds or interest accrued on reserve funds for certain purposes.
- Revising requirements for structural integrity reserve studies and mandatory milestone inspections.
- Revising requirements relating to maintenance, repair, and replacement of common elements and condominium property.
- Revising the documents to which prospective purchasers are entitled when purchasing a condominium unit from a unit owner.
- Requiring specified disclosures relating to milestone inspections, turnover inspection reports, and structural integrity reserve studies for certain contracts entered into after a specified date.
- Revising rights relating to the official records of a cooperative association and providing maintenance requirements for cooperative associations.
- Revising requirements relating to budget procedures.
- Revising cooperative association reserve account requirements.
- Revising requirements relating to waiving reserve requirements or providing fewer reserves than required by law.
- Revising a prohibition on using reserve funds or interest accrued on reserve funds for certain purposes.
- Revising requirements for structural integrity reserve studies and mandatory milestone inspections as well as providing applicability and conforming provisions to changes made by the act.
- Amending s. 719.301, F.S. and revising items that developers are required to deliver to an association upon relinquishing control of the association.
- Amending s. 719.503, F.S. and revising the types of documents developers are required to provide to prospective buyers and lessees.
- Revising the documents to which a prospective purchaser is entitled when purchasing an interest in cooperative from a unit owner, and requiring specified disclosures relating to milestone inspections, turnover inspection reports, and structural integrity reserve studies for certain contracts entered into after a specified date.

Additionally, if a building reached 30 years of age before July 1, 2022, the building’s initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building’s initial milestone inspection must be performed before December 31, 2025.

If the date of issuance for the Certificate of Occupancy is not available, the date of issuance of the building’s Certificate of Occupancy shall be the date of occupancy evidenced in any record of the local Building Official. This can be in the form of inspection records or an electrical release that first allowed electrical power to be energized to the building.

Broward and Miami Dade counties have already approved requirements even stricter than 2023-203. Other localities have either approved or are considering similar requirements.

STEPS TO COMPLY WITH FLORIDA STATUTE 2023-203

As mentioned, if you have a type of building listed that is a condominium or cooperative association receiving its certificate of occupancy before July 1st, 1992, then you must have a milestone inspection by December 31st, 2024. Other building types may have a stricter requirement, especially if situated in Broward or Miami-Dade Counties.

These inspections are provided by a licensed architect licensed under chapter 481 or engineer licensed under chapter 471. Note that if your building falls within the stated definition of a “threshold building,” additional qualifications for the inspector prevail. As a part of their assessment, an inspector will put together either a remediation plan or a declaration that the building is safe. This can then be submitted to the authority having jurisdiction (usually the local building official) to fulfill this obligation. If issues are found during the inspection, then program managers can work with owners, developers, property managers, etc., to scope out the work, put together project teams, and so on. Independent project monitors (owners’ reps) may also be hired as consultants to oversee the work, coordinate the various contractors, and ensure everything is done according to specifications.

Associations must fund reserves for the continued maintenance and repair of buildings to cover the cost of any necessary work to be done. Forensic accountants can conduct structural integrity reserve studies to help ensure compliance and appropriate funding is available.

If you have questions about these steps, feel free to contact:

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CONCLUSION

2023-203 may be construed as a draconian measure to bring buildings to their appropriate safety standards. However, besides the obvious preservation of life and property, the law(s) must be taken seriously for their potential financial and personal liability impacts. Working with the right partner is key for liability, financial and life safety reasons.

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