

*September 2, 2021*

## **BEFORE THE WALLS COME CRUMBLIN' DOWN: Lessons that Condo Associations Can Learn from Surfside, Florida Condominium Building Collapse**

**By:** [Katrina E. Solomatina](#)

### **Surfside Collapse – what we know so far:**

On Thursday, June 24, 2021, at approximately 1:25 a.m., Champlain Towers South, a twelve-story beachfront condominium in the Miami suburb of Surfside, Florida, partially collapsed. The collapse was reported as the third deadliest structural engineering failure in United States history. Ninety-eight people were confirmed dead, only four people were rescued from the rubble. Approximately 35 people were rescued the same day from the uncollapsed portion of the building, which was demolished 10 days later.

### **Causes of the Collapse:**

It appears a number of factors contributed to the tragedy. The main contributing factor is a long-term degradation of reinforced concrete structural support in the ground-level parking garage under the housing units, due to water penetration and corrosion of the reinforcing steel. Other possible factors include land subsidence, insufficient reinforcing steel seen in the debris, as well as poor code enforcement, poor maintenance, and a refusal by the Association board to impose special assessments to make much-needed repairs.

### **What decisions and actions had the Association made?**

#### ***No reserves and no proper maintenance***

The Surfside towers were built in 1981. The Association had no reserves and decades of deferred maintenance. It had low assessments, most likely because it was not funding its reserves. And it was not maintaining or repairing project common areas. Unlike California, Florida has no requirement for reserve studies. Everything is voluntary. When the board finally commissioned a study in 2020, Association Reserves, Inc. found the Association had only funded 6.9% of projected reserves – a frighteningly low level that guarantees large special assessments in an association's future.

Finally, in 2018, the board had commissioned a structural engineering survey. The nine-page report issued by the engineering firm found water intrusion leading to structural damage. The engineer noted that window frames, balconies, the pool deck, planters, and the entrance drive (over the underground parking) all had waterproofing problems. In addition, windows and exterior doors in the entire complex were at the end of their useful life and needed to be replaced. Half of the balconies had evidence of deterioration.

By 2021, the engineering company advised the Board the problems first reported in 2018 were "much worse." The Champlain Towers Board had been issued dire warnings, but board members balked at paying the estimated \$15 million to make these much-needed repairs. Lawsuits have already been filed

against the Association and its Board. The Association is now in court-ordered receivership and all of its Board members have resigned.<sup>1</sup>

### **What statutes or regulations exist in California to attempt to protect against this type of calamity?**

The short and very frightening answer is NONE really. California has enacted a limited number of statutes dealing with reserve study requirements and balcony inspection requirements following the famous Berkeley balcony collapse.

#### ***Reserve Study requirements***

Boards of directors for all associations, regardless of size, are required to prepare a reserve study (Civ. Code §5550), unless the total replacement costs are less than 50% of the gross budget of the association, excluding the association's reserve account for that period. (Civ. Code §5550(a).)

- ***Only includes a requirement for an on-site visit once every 3 years***

At least once every three years, the board of directors of an association shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain. (Civ. Code §5550(a).)

- ***No structural analysis***

A reserve study is not actually a "study" of the roofs, boilers, streets, etc. Instead, it is a list of the major common area components with an estimate of their remaining useful life.

#### ***Balcony inspection requirements***

Beginning January 1, 2020, associations with buildings that have three or more units must inspect elevated load-bearing structures which are supported substantially by wood. (Civ. Code §5551(l).) The inspector must submit a report to the board providing the physical condition and remaining useful life of the structures and their associated waterproofing systems.

- ***Wood frame only***

This inspection requirement applies only to "load-bearing structures which are supported substantially by wood." Although that probably covers most California buildings, it does not cover non-wooden structures.

- ***Inspection/study not required until 2025, and every 9 years thereafter***

Associations must complete their first balcony inspections before January 1, 2025. Thereafter, elevated structures must be inspected at least once every nine years. (Civ. Code §5551(b)(1).)

- ***Not a project wide analysis***

And finally, this requirement only covers load bearing structures, such as balconies and is therefore not a project wide analysis.

As a result, it seems that California projects are even more at risk than Florida projects. Based on the lack of current legislation, the need for additional legislation is apparent. The reserve study analysis is important and board members should insist that such a study cover structural elements. Almost every board of an association that has been in existence more than 10 years should strongly consider undertaking a structural study and couple it with inspections.

**What about insurance – does Directors and Officers Insurance cover the Board members?**

The Directors and Officers (D&O) Insurance issues presented by this situation are also interesting. We are dealing with a circumstance where one would expect the current board members as well as directors and officers going back a decade or more to be named in lawsuits alleging their actions (or in this case, the failure to act) led to the building's ultimate collapse. Such a lawsuit has already been filed by a resident of the building against the Champlain Towers South Condominium Association, seeking \$5 million in damages "due to defendant's acts and omissions and their failure to properly protect the lives and property of plaintiff and class members."<sup>ii</sup> Unfortunately, typical D&O policies contain bodily injury and property damage exclusions, which are designed to ensure the D&O policy does not inadvertently duplicate the coverage provided by the underlying general liability (CGL) policies. Typically, the Association would look towards the General Liability and umbrella policies the Association maintains to step in and pay the defense costs and liability claims brought by the families of the residents that perished in the collapse.

**I serve on my condo project board – what should we be doing?**

- ***Take steps now***

If a condominium project is less than ten years old, it is important for boards to talk to legal counsel to determine if structural defects exist. They should have the property inspected and a report prepared, and then take appropriate action. Almost every board of a condominium association in existence for more than 10 years should undertake a structural study. Legal counsel should be consulted as to the best manner to engage a consultant for the study.

- ***Maintenance and Safety***

Boards of condominium associations have a primary duty to the members of the association of maintenance of the common areas and ensuring sufficient funds are available to do so. That means properly funding reserves and then spending those monies to keep building components in good condition. When directors receive a report warning of imminent harm, they should move quickly with an emergency special assessment, if needed, to address the danger.

- ***Funding the Association's Reserves***

The most important thing a board can do is properly fund its association's reserves and then spend the money to maintain the common areas. A guide on the best practices for "Reserve Studies & Reserve Management" was put together by the Foundation for Community Association Research and is available as a free download. Boards, treasurers and budget committees should read it. (Additional "Best Practices" guides on matters such as security, ethics, financial operations, and governance are also available from the Foundation.)

- ***Following Consultant's Recommendations***

The other lesson from the Surfside tragedy is that when a consultant recommends something and there is a recommendation to correct something that requires immediate attention – the board has to do it.

- ***Reviewing Association CC&Rs***

In addition, it is highly recommended the board review the association's CC&Rs to determine what insurance coverages, if any, exist which could help cover damages in times of disaster. Although earthquake insurance is not required by statutes, some CC&Rs do require it.

- ***Preparing and Implementing an Emergency Plan***

And finally, if an association does not yet have an emergency plan which would direct its board and members on the steps to be taken in times of disaster, it is a good idea to consider preparing one for your association. For tips on what needs to be included into such an emergency plan, please refer to my prior article on this topic. <sup>iii</sup>

*Katrina E. Solomatina is a member of the Firm's Real Estate practice group in the San Francisco office. Katrina has specific expertise in counseling clients in the area of community association law, including compliance with Davis-Stirling Common Interest Development Act, and the drafting of commercial and residential development declarations of covenants, conditions and restrictions (CC&Rs).*

*Katrina also currently serves on the Board of ECHO (Educational Council of Homeowners). Katrina is a member of the CAI and its Bay Area and Central California Chapters and CACM. Katrina is a frequent speaker and writer on the community association topics.*



**Katrina E. Solomatina**

Attorney  
(415) 227-3576  
ksolomatina@buchalter.com

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit [www.buchalter.com](http://www.buchalter.com).

---

<sup>i</sup> <https://knpr.org/npr/2021-07/florida-judge-orders-surfside-condo-association-board-receivership>

<sup>ii</sup> <https://www.cnn.com/2021/06/29/us/surfside-condo-collapse-lawsuit/index.html>

<sup>iii</sup> "All Things are Ready if our Emergency Plan Be So" Dealing with Emergency Preparedness in California HOAs