

New Jersey Becomes Second State to Enact Legislation to Protect Structural Integrity of Residential Housing Structures Including Common Interest Communities

What You Need to Know

On January 8, 2024, New Jersey became the second state in the country to pass legislation designed to protect the structural integrity of condominiums and cooperative buildings. In response to the tragic June 2021 collapse of the Champlain Towers South beachfront condominium in Surfside, Florida, Governor Phil Murphy signed legislation instituting additional inspection and maintenance procedures for any primary load bearing systems of residential housing structures, including, but not limited to, common interest communities (e.g., condominiums and co-ops). Additionally, the law implements capital reserve study requirements to ensure adequate funds for the repair and/or replacement of capital assets in common interest communities. The Community Associations Institute New Jersey Chapter (CAI-NJ) Legislative Action Committee was instrumental in advocating for and developing this legislation.

Inspection Requirements

The new law, which became effective immediately, sets forth a timeline of required inspections of any primary load bearing systems in residential housing structures. A "primary load bearing system" is defined as the "structural components within a building comprised of columns, beams, or bracing that by contiguous interconnection form a path by which external and internal forces applied to the building are delivered to the foundation. The foundation as well as any connected attached balconies shall be included as part of the primary load bearing system evaluation."

These inspections are required for any "covered buildings," which are defined as "a residential condominium or cooperative buildings that have a primary load bearing system that is comprised of a concrete, masonry, steel or hybrid structure, including, without limitation, heavy timber and a building with podium decks, but not including an excluded structure." The statute further defines "excluded structures" (i.e., buildings not subject to the inspection requirements) as:

- (1) International Standardization Organization ISO type 1 construction or frame-built construction with combustible walls or roofs, but not including a podium deck on which the frame-built construction is situated;
- (2) a building with ancillary elements that are not part of the primary load bearing system such as, but not limited to elevator shafts or concrete, masonry, steel or heavy timber that the primary load bearing system does not deliver a building's load to the foundation;
- (3) a building that is not a condominium or cooperative, and consists primarily of rental dwellings; or
- (4) a single-family dwelling.

By way of example, the inspection requirements apply to condominium buildings, which are covered buildings, and a condominium association is responsible for having its buildings inspected. According to the law:

Regardless of the above timelines, if there is observable damage to a primary load bearing system noted during an inspection, a re-inspection must occur within sixty (60) days of the preceding inspection.

For any structural inspection reports generated, the inspector must note any required repairs to or maintenance of any of the primary load bearing systems and must also state when the next inspection will take place. The structural inspection must be performed by: (1) a New Jersey-licensed engineer who meets the statutory requirements of a "construction official"; (2) a New Jersey-licensed engineer employed by the New Jersey Department of Community Affairs Bureau of Housing Inspection; or (3) a New Jersey-licensed engineer who possesses the same qualifications required of an engineer under contract with the enforcing agency and has been hired by the owner to perform such inspections.

All structural inspection reports must be made available to the owners and residents of the common interest community as well as any applicable governmental agencies or authorities.

Capital Reserve Study Requirements

In addition to inspection requirements, the new law sets forth requirements for capital reserve studies conducted by common interest communities. Most significantly, a reserve study must be updated at least every five (5) years. If an association's reserve study is more than five (5) years old as of January 8, 2024, or if an association does not have a reserve study, the association shall have one (1) year from January 8, 2024, to produce a reserve study.

Associations formed after January 8, 2024, shall have up to two (2) years after the election of a majority of the executive board to perform a reserve study. The reserve study must be supervised or performed by: (1) a CAI-accredited Reserve Specialist; (2) a New Jersey-licensed engineer; or (3) a New Jersey-licensed architect. The reserve study must include projected costs for the above structural inspections as well as a 30-year funding plan. A community association whose reserve account is inconsistent with its 30-year funding plan shall have the lesser of ten (10) years or the date by which the reserve account is projected to have a negative balance to comply with its 30-year funding plan (but only if the community association would need an increase in its assessments of more than ten percent (10%) to comply immediately with its 30-year funding plan). If the assessment increase to comply with the 30-year funding plan is less than ten percent (10%), the association must comply with its 30-year funding plan within two (2) years.

Notably, a community with less than \$25,000 in total common area capital assets is exempt from the above reserve study requirements.

This new legislation will be of significant benefit to community associations throughout New Jersey and demonstrates that the state cares about its residents and strives to ensure that another tragedy like the collapse in Surfside does not occur. The structural inspections and reserve study requirements will help all community associations ensure that their communities are safe for residents and that necessary structural repairs and maintenance can occur when necessary.

Please contact the authors of this Alert with questions regarding the requirements of this new law or to discuss your specific circumstances.

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