

LEGAL



New Condo Laws and Unanswered Questions

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There is no doubt that the new condominium legislation is transformational, arguably the most significant change to the condominium statutes ever. The legislation has led to several “glitches”. It is likely that we will see some efforts at “glitch legislation” before the law is in full force as of January 1, 2025.

Here is a look at what we see as some of the most significant unanswered questions in the new law:

- 1. **Timing of the Milestone Inspection:** There is a conflict in the statute. One section states that milestone inspections and reports for older buildings must be completed by December 31, 2024. Another section states that the Association has 180 days from receipt of certified mail notice from the local building official to complete the process.
- 2. **Impact on One- and Two-Story Buildings:** While the statute exempts one- and two-story buildings from the requirement for a milestone inspection and structural integrity reserve study, it does not contain a specific exemption regarding the new prohibition against waiving or reducing full funding of certain statutory reserves.

Therefore, as of 2015, as the law is written today, no condominium will be able to waive or reduce its reserves as many have done over the years.

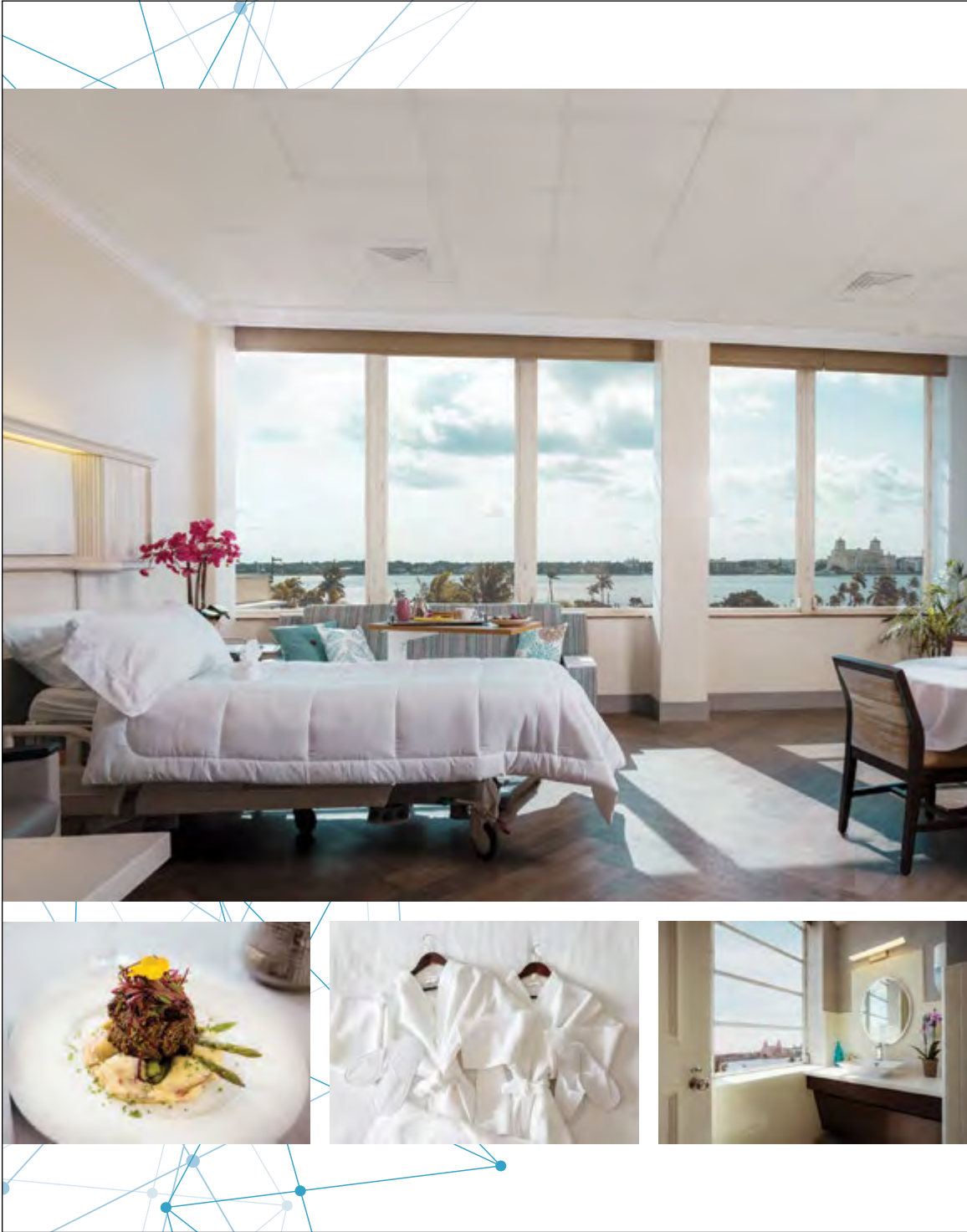
- 3. **Preparation of Structural Integrity Reserve Study (“SIRS”):** The new law permits the “SIRS” to be prepared by a qualified person. However, reserve analysts are not licensed or regulated in Florida, so who is “qualified”? Additionally, the visual inspection upon which the SIRS is based must be done by a Florida licensed architect or engineer. Since most reserve study companies do not have field engineers engaged in this process, how is this going to work?
- 4. **Pooling Reserves:** The law will prevent use of reserve funds for “SIRS components” from being used for other purposes. Does this mean that pooled reserves are no longer permitted? Or does it mean the Association can still have a “pool” for the “non-SIRS” items. Or can the Association have two pools, a “SIRS-pool” and a “non-SIRS pool”?
- 5. **Windows:** The statute requires the SIRS to contain a line item for window replacement. The Declarations for many condominium communities make the maintenance, repair, and replacement of windows an Owner responsibility. How does this work? The statute also does not

define what a “window” is or is not. For example, are sliding glass doors or glass “curtain walls” considered “windows”?

- 6. **Officer/Director/Management Liability:** The statute imposes a cause of action for breach of fiduciary duty against Directors and Officers and imposes a compliance duty on CAM’s and management companies. Since the statute already contains fiduciary obligations, does the statute intend to impose greater liability on volunteers? How will the management industry react regarding their indemnification requests during management contract negotiations?

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Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is for educational purposes only and is not intended as legal advice. When you receive a notice for a milestone inspection or wish to know more about any of the topics above which may impact your condominium, please consult your community association attorney. Mr. Friedman may be reached at MFriedman@beckerlawyers.com.



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