

Demystifying Condominium Reserve Requirements

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There has been a great deal of media coverage about the effect of Florida's legislative changes to condominium reserve requirements and many condominium directors have been confused about which laws affect their condominium, when they go into effect and whether there are any options to avoid what the law requires. If there was ever a time for condominium directors to lean on experienced community association legal counsel to guide them, it is now. The statutes can be quite confusing to even the most experienced directors and there are instances when the language is less than clear and will require an interpretation based upon explanations or historical conclusions expressed by the Department of Business and Professional Regulation. It is impossible to answer all the questions concerning these issues in a single article, but I will hit the most common questions here in an effort to help directors better understand the effect of the laws so they may ask the right questions about their own communities.

Which condominiums are required to have reserves?

All condominiums, whether residential or commercial are required to annually prepare a budget that includes fully funded reserves. In addition to annual operating expenses, the Condominium Act requires that the budget must include reserve accounts for capital expenditures and deferred maintenance. The reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item.

The number of stories in the condominium is not relevant to this requirement; it applies to single story buildings both residential and commercial and all others. Residential condominium buildings three stories or higher have additional requirements.

What categories are specifically required for buildings over three stories?

For residential buildings which are more than three stories in height (as determined by the Florida Building Code), the law requires reserves must be maintained for the following items if the association is responsible for their maintenance pursuant to the declaration of condominium (determining what is included in that category can itself be a source of confusion especially since so many older condominium documents lack clarity):

- a. Roof.
- b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706, Fla. Stat.
- c. Fireproofing and fire protection systems.
- d. Plumbing.
- e. Electrical systems.
- f. Waterproofing and exterior painting.
- g. Windows and exterior doors.
- h. Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

How does a board know how much to reserve for each category?

For those residential buildings three stories or higher, the association must have a structural integrity reserve study (SIRS) completed at least every 10 years after the condominium's creation for each building by a person who meets the statute's requirements. Reserves must be maintained for the items listed in "a" through "h" as indicated above and must be based on the findings and recommendations of the association's most recent structural integrity reserve study. **With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, the association is not required to reserve replacement costs for such items, but must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items.**

What about commercial condominiums and residential buildings of less than three stories where they are not required to have a Structural

Reserve Study? How does a board know how much to reserve and for what categories?

While the law does not expressly require a professional reserve study for commercial buildings or residential buildings under three stories, the law does require the amount to be reserved to be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. Many condominium directors (and many managers) lack the expertise to evaluate which categories require reserves and have limited experience estimating remaining useful life and estimated replacement cost or deferred maintenance expenses of the reserve items. The best way for a board to have an accurate picture of the categories and amounts for which reserves are required is to engage a company to perform a reserve study. The study may not include the same detail about the building's structure as a SIRS report would include, but it should identify all the categories for which the law requires all condominiums to provide.

May the board or the unit owners vote to waive reserves, partially fund reserves or use reserves for something other than their intended purpose?

Waiving reserves, partially funding reserves, using reserves for alternative purposes or using interest on reserves has never been the province of a condominium board alone; the law has always required unit owner approval for anything other than fully funded reserves. **Under the recent amendments to the Condominium Act, a higher level of unit owner approval is required to waive or reduce the amounts of reserves or to use reserved money for anything other than that for which the money has been reserved. For those buildings required to have an SIRS, reserve amount for the items listed in "a" through "h" may simply never be waived, used for any non-reserve purpose or underfunded no matter what the unit owners may want.**

What are the deadlines for fully funding reserves if we need to have a SIRS?

For budgets adopted before December 31, 2024, the unit owners may vote to either waive reserves or partially fund any category of reserves. For a budget adopted on or after December 31, 2024, the unit owners in a condominium required to obtain a SIRS may NOT determine to provide no reserves or less reserves than required for items listed in "a" through "h" listed above and may not vote to use those amounts for anything other than the category for which the funds were reserved. For those condominiums who may still waive, underfund, or vote to use reserves for other than that for which they money was reserved, a vote of a majority of all the owners' voting

interests at a members' meeting called for that purpose is required. It is no longer adequate to obtain the approval of only those owners who attended and voted in person or by proxy at a meeting where a quorum was present. The threshold has been increased to require the approval of a majority of all voting interests. How to go about scheduling a meeting to seek approval to do anything other than fully fund reserves should be a matter discussed with your legal counsel.

If our condominium requires a SIRS and one or more portions of our association-maintained property are concluded to have exceeded their useful life, will our budget created after December 31, 2024 be required to include enough money in a reserve to cover the replacement cost during that budget year?

Yes, probably. Some condominiums have been reserving for less than they needed to adequately maintain and replace all parts of their condominium property when that item requires maintenance or replacement. Since the law now requires that reserves be funded and maintained based on the findings and recommendations of the association's most recent structural integrity reserve study, if a SIRS study concludes that one or more items have already exceeded their useful life and require replacement immediately, even if the board thinks it may safely delay repairing or replacing the item, the new law may be construed to require that the association budget for the full cost of replacement as the reserve for that item in that budget year. For many condominiums, these situations are creating the most stress for directors and their unit owners.

I heard that the legislature may change the law. Do we need to comply now or can we wait to see if the law changes?

All condominiums must comply with the law as it is currently written. While there have been some state legislators who have commented that the requirements of the law are too difficult and expensive for many condominiums and their owners to comply with, the legislature is not currently in session and there does not seem to be political support to call a special session. The Florida Senate president has expressly said she will not do so. The legislature does not convene again until March 4, 2025 and any changes they may make will not likely be effective until July at the earliest; for many condominiums, that is too close to budget season to come up with a plan to comply with the impending financial requirements.