

SB4D Summary Rules and Issues 3/21/23

June 2021 the entire central and east sections of Surfside condominium collapsed. The event took less than 15 seconds, and left 100 dead and hundreds injured. In response May 2022, the Florida Legislature approved SB4D. The new law requires more frequent milestone inspections, associations set aside mandatory reserves for defects identified in the inspections, and the inspections and reserve budgets are provided to, and enforceable by, local building departments and the FL Department of Business Practice and Regulation.

The following are highpoints of the new law:

- 2 basic components to the law, inspections and reserve budgeting.
- Applies to FL condos 3 stories or higher and 4 units or more.
- Residential, commercial, and coops
- **Inspections (Milestone Inspection Report Summary):**
 - Roof, load bearing walls and all structural members, floor, foundation, sea walls, fire proofing, fire protection, plumbing, electrical, water proofing, painting, and anything over \$10k that affects these items.
 - 2 phases. Phase 2 occurs if defects are found in phase 1.
 - Phase 2 will be extensive deep and possibly destructive testing, boarings, soil, foundations, etc.
- **Budgeting (Structural Integrity Reserve study):**
 - Prepared by authorized parties.
 - No shopping for better inspection reports or better budgets.
 - Unit owners can no longer vote down the reserve budget as in the past.
- **Deadlines:**
 - Buildings older than 25 years and within 3 miles of coast line, December 31 2024.
 - Buildings over 30 years and more than 3 miles of coastline, December 31, 2024.
 - Every 10 years thereafter (was 40)
- **Time frame to complete;** associations should plan on 1 year from start to finish; from the time the inspection is scheduled to the time the budget is approved.
 - This includes phase 1 inspections, phase 2 inspections, budget preparation, and board approval.
 - It is anticipated there will be a shortage of qualified inspectors.
- Once they are conducted, Inspection and budget reports must go to:

- Association
- Owners
- Owners must provide to buyers
- local govt building office
- DBPR
- Post on ASC. website, and leave a copy on property.
- Once the reports and budgets are completed
 - The mandatory assessments will become public.
 - The conversation between buyers and sellers will get a whole lot more complicated.
- Board members can be liable for failure to comply.
- Only state licensed engineers and architects can perform inspections.
- Local government building offices will have violation powers for failure to comply, potentially leading to violation notices, liens, potential condemnation. Enforcement mechanisms are still being sorted out.
- There will be buildings with deferred maintenance that will vote to terminate the condominium because the assessments are too big, and look for a developer buyer.
- Because of their business model, typical age, and reputation for deferring maintenance to keep assessments low; co-ops that don't own the land and are instead on long-term leases, are especially vulnerable to termination.
- Once the inspection and budgeting reports are completed, buildings with defects will be very difficult to obtain loans and insurance, and in some cases uninsurable and not lendable.

Until the inspections and reports are completed, there is a little window of opportunity to sell properties without the complication and potential price suppression of the SB4D reporting.

- Under the 3 seller's disclosure rules of Johnson v Davis, section 10(j) line 250 of the contract, it is my opinion sellers have no duty to disclose the fact that SB4D reporting is imminent.
- The test of whether the seller has a duty to disclose is on line 250 of the contract. A seller must disclose when (all 3 must be present for the disclosure to be required):
 - Seller has knowledge.
 - The issue/defect materially affects the value of the property.
 - The issue/defect is not readily observable.
- It's my opinion the seller does not have to disclose for 2 reasons, SB4D is a law, it's all over the media, so it's "readily observable". And in the most recent Condominium Rider (dated 3.20.23, put into circulation the day before this outline was made), there is an



SB4D disclosure statement at the very end putting the buyer on written notice of the presence of SB4D inspections and reporting.

- Note, the requirement to give the buyer a copy of the reports is baked into the rider now.

Realtors should be aware of Sec 3(c)(j) of the Condominium Rider, (weather its a SB4D condo sale or not) which says, the seller is under a duty to disclose special assessments which have been either (a) an agenda item, or (b) appear in the minutes of the association a year prior to the sale, or under (iii), seller will pay such assessments at closing. To fulfill seller's disclosure duties under this provision of the condo rider, I recommend realtors place the documents referenced in 3(c)(i), in the documents section of their listing, and get a confirming email from buyer's agent for their file, that buyer's agents saw the documents.

Below is a list of consultants that can perform the engineering studies and budgeting reports:

- Thornton and Tomasetti Consulting Engineers
<https://www.thorntontomasetti.com/florida-sb4d-building-safety-law#:~:text=SB%2D4D%20establishes%20a%20statewide,are%20safe%20for%20continued%20use>
- Jezerinac Group Engineers <https://jezerinacgroup.com/>. - Graham Brasic contact Direct line 561 473 9439 gbrasic@jezerinacgroup.com.
- Condo Milestone Structural Inspections, PLLC <https://condomilestoneinspect.com/> - Jeff Gunther contact 561 371 2320 CondoMilestoneInspections@gmail.com
- Al of Florida Universal engineering - <https://teamues.com/>. Danielle Nichols contact 727 354 8721 dnichols@teamues.com

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24/7 realtor transactional support, attorney Jim Brown text 561-307-0885



All references to a contract are the FL FAR/BAR AS-IS 2021, and most recent riders

The foregoing is a summary of the opinions of attorney James Brown, provided to licensed Florida realtors, and should not be relied on as legal advice or a complete explanation of any particular issue. Every situation is different, and you should seek qualified legal advice before making a decision.

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