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Condo Collapse Creates Consumer Collapse

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CONDO COLLAPSE CREATES CONSUMER COLLAPSE

Alexandra Alvarez

ABSTRACT

The collapse of Champlain Towers South in Surfside led the Florida legislature to enact Senate Bill 4-D in the hopes of ensuring public safety and better regulating its previous unsatisfactory building code. While the implementation of this new bill is well intentioned and much needed, it carries with it impactful consequences on consumers.

Senate Bill 4-D comes alive during a time when the real estate market in South Florida is scorching. The new bill will continue to force consumers to reach into their savings and pay tens of thousands of dollars, if not more, to improve the structural integrity of their condominiums and replenish many years of disappointing reserves. American consumers who are unable to afford the imposition of such hefty assessments must decide between abandoning their homes or drowning in debt, further fueling the housing affordability crisis.

To protect consumers from these implications, the Florida government must further intervene. Consumers need access to assistance that provides some relief on the financial burden attached to the enactment of this bill. Furthermore, there needs to be professional oversight on condominium associations. The purpose of enacting Senate Bill 4-D was to protect Floridians, but alone the bill cannot achieve its objective.

TABLE OF CONTENTS

Introduction	312
I. The Collapse of Champlain Towers South	313
II. Explanation of Building Codes.....	317
III. Overview of Florida's Building Code.....	319
IV. Enactment of Senate Bill 4-D	321
a. Potential Issues with Senate Bill 4-D	322
V. Effects of the Enactment of Senate Bill 4-D	324
a. Impact to Consumers.....	324

b. Impact on the Real Estate Market	327
VI. Proposals to Protect Consumers Facing the Effects of Senate Bill 4-D.....	328
a. Oversight Requirement.....	328
b. Tax Relief.....	330
c. Local Government or Quasi-Government Entities Provide Requisite Capital	330
Conclusion.....	331

INTRODUCTION

While Florida has progressively instituted some of the toughest building codes in the nation,¹ it still is not sufficient to protect consumers. As a result of a deadly building collapse, the Florida legislature enacted Senate Bill 4-D to tighten its building code once more. Florida lawmakers initially responded to the tragic collapse by appointing a task force to make recommendations on how to improve their current building code and prevent a similar tragedy.² The task force was comprised of eight attorneys who had extensive experience with condominium law.³ Eventually, the recommendations led state lawmakers to pass Senate Bill 4-D with unanimous support.⁴ Essentially, the task force proposed that the government “shorten the leash on condominium self-governance” because unit owners “choose their wallets over anything else” and are “incapable of protecting themselves.”⁵ While the reasoning behind pushing for stricter requirements was well intentioned, the new bill has several unintended, negative consequences.

At first glance, the bill “makes a laudable attempt at addressing the physical issues facing Florida’s aging condominium stock.”⁶ Senate Bill 4-D creates two primary pillars of protection: milestone

¹ See Bob Henson, *South Florida’s Hurricane Building Code is Strong – North Florida’s Could be Stronger*, WEATHER UNDERGROUND (Oct. 16, 2018), <https://www.wunderground.com/cat6/South-Floridas-Hurricane-Building-Code-StrongAnd-North-Floridas-Could-Be-Stronger>; See Kim Bellware, *Hurricane Andrew Transformed Florida’s Building Codes. The Champlain Towers Collapse Could Usher in a New Era of Regulation*, WASH. POST (June 30, 2021, 2:13 PM), <https://www.washingtonpost.com/history/2021/06/30/florida-building-codes/>.

² Martin A. Schwartz & Kevin M. Koushel, *Senate Bill 4-D and the Champlain Towers South Disaster: A Problem in Response to a Problem*, 96 FLA. BAR J. 6, 62 (2022).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

inspections and structural integrity reserve studies.⁷ However, after a few months of allowing the new bill to do its job, “the prevailing consensus is that it may create more problems than it can solve and ironically result in the elimination of many more Florida condominiums.”⁸ The legislature was so focused on protection, “it ignored the corresponding price tag to existing owners” that may inevitably force thousands of unit owners out of their homes “when the costs of building safety becomes unaffordable.”⁹

Part I of this article provides an in depth look at the tragic collapse of Champlain Towers South and further explains what exactly went wrong. Parts II and III discuss the history, purpose, and creation of building codes generally and in Florida, respectively. Part IV provides an explanation of the requirements imposed by Senate Bill 4-D as well as potential issues that may result from its implementation. Part V analyzes how the new bill has affected consumers and the real estate market in South Florida. Lastly, Part VI proposes how to mitigate the negative effects consumers face as a result of Senate Bill 4-D.

I. THE COLLAPSE OF CHAMPLAIN TOWERS SOUTH

On the very early morning of June 24, 2021, a residential tower in Surfside, Florida, “spontaneously collapsed, burying 98 people in a concrete tomb.”¹⁰ Although, it could be said it was hardly spontaneous. The structural problems of Champlain Towers South can be traced back almost four decades.¹¹ In the 1970s, a group of Canadian developers came to the northern border of Miami Beach to construct luxury high-rise buildings.¹² Unsurprisingly, Champlain was their first project and was designed by architect, William M. Friedman, and structural engineer, Sergio Breiterman, “a duo with a history of cutting corners.”¹³

⁷ *Id.*

⁸ *Id.*

⁹ Schwartz & Koushel, *supra* note 2.

¹⁰ Sarah Blaskey et al., *House of Cards How Decades of Problems Converged the Night Champlain Towers Fell*, MIA. HERALD (Dec. 30, 2021), <https://www.miamiherald.com/news/special-reports/surfside-investigation/article256633336.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Champlain was an “L-shaped” tower with a pool deck built above an underground garage.¹⁴ Review of the building’s blueprints revealed several design flaws. The portion of the tower that survived the collapse was held up by 24x24-inch columns, while the rest of the building’s columns were less than half that size.¹⁵ Columns holding up the pool deck were the smallest and those holding up the part of the tower that ultimately collapsed were too small to meet building code requirements at the time.¹⁶ Reinforcement concrete walls were added to the building in two locations, but they were still inadequate to support the structure and only added support in one direction.¹⁷ Furthermore, beams that were originally planned to fortify the pool deck were ultimately left out and never constructed.¹⁸ Still, Champlain was completed on December 12, 1981, despite its inaccurate safety certification and compliance with building codes.¹⁹

Structural flaws began to show immediately. Based on the building model built by The Herald and University of Washington engineering professor, Dawn Lehman, using information available in the 1980 structural drawing of Champlain, the pool deck showed signs of distress on move-in day.²⁰ Without the installation of decorative pavers

¹⁴ Blaskey, *supra* note 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Dawn E. Lehman & Sarah Blaskey, *Seven Minutes to Collapse*, MIA. HERALD (Jan. 12, 2022), <https://www.miamiherald.com/news/special-reports/surfside-investigation/article256178672.html> (model based on actual conditions of building prior to collapse would be more accurate in predicting the structure’s behavior but this was not possible because The Herald could not access site to conduct necessary tests) (“Federal investigators with the National Institute of Standards and Technology will be able to make a more accurate model based on actual conditions as they probe the collapse debris and other data, including concrete core and rebar samples, which would help in gauging water damage that occurred over time. For this and other reasons, the results of the Herald/UW model represent an important step in understanding a possible collapse scenario but not the definitive result. Despite these limitations, the reference model based on the structural drawings appeared to predict the known conditions within the building prior to collapse.... Residents told stories about sticking doors & sagging bedroom floors that were consistent with the simulated conditions, suggesting the building had sagged and warped in the areas predicted by the model.”) (based on witnesses, timestamps, and video of actual collapse, it became increasingly likely that the collapse began on the first floor pool deck due to an initial failure of internal rebar) (“Post-collapse photos show rebar placed every 12 inches or so, snapped or pulled out piece by piece along the southern perimeter wall during the collapse. Although it would seem unusual for a progressive

and tiles, cracks in the concrete slabs would have been visible on the pool deck around the columns.²¹ In fact, inspection reports revealed that rather than removing the previous decorative layer during resurfacing projects over the years, thereby exposing the cracked slabs, contractors installed new layers on top of the old to mitigate costs.²² This exacerbated the problem of the pool deck sagging, which was most severe in areas where the underground parking garage columns were farthest apart.²³ Inspection reports noted that because the pool deck sagged against the structural perimeter wall, it caused a strain in the connection between the two and needed repeated maintenance throughout the years.²⁴ Planters placed around the pool deck also added to the problem.²⁵ The plant roots grew through their pots and further damaged the surrounding structure.²⁶

According to engineers who reviewed photos of the actual concrete slabs, there was insufficient rebar placed before concrete was poured during original construction, which led to under-reinforced connections.²⁷ Engineers were shocked at how long Champlain actually stood because the building was so overstressed for many years.²⁸ One reason why it stood so long was because the subterranean structural perimeter wall worked like a clamp in taking some pressure off of the poorly reinforced connections.²⁹ In 2018, the condo's engineer warned there was "major structural damage to the concrete

collapse to begin with a failure in a connection more than 100 feet away from the tower that ultimately fell, Champlain South was a continuous structure making the progression possible, if somewhat less likely than other scenarios on face value....Photos not only indicated corroded rebar but suggested that some connecting rebar called for in structural plans was not actually present in structural members. This was factored into the analysis, but conservatively. While inspection reports indicated that the pool deck had suffered potentially debilitating water intrusion, concrete degradation was not factored into the model. The concrete was modeled at full design strength."); Blaskey, *supra* note 10.

²¹ Blaskey, *supra* note 10.

²² *Id.*

²³ *Id.* (columns placed farthest apart to prioritize spaces in garage below).

²⁴ *Id.* (residents even noted that in parts where the concrete sagged, there would be puddles after it rained, and an engineer hired by the condo to inspect the structure in 2018 stated that a major design flaw was that the building did not allow for proper drainage which led to the severe water damage).

²⁵ *Id.*

²⁶ *Id.* (noted in condo records from 2017; eight palm trees ended up being removed because their roots penetrated twelve feet into planter drains, cracking the pipes).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

slab, which needed urgent repairs.”³⁰ It was quoted to cost \$9 million.³¹ The condo did nothing, the damage got worse, and time ran out.³²

The collapse of Champlain Towers South began before there were any visible signs.³³ Witnesses first heard disembodied sounds around 1:00 AM on the morning of the disaster.³⁴ Residents and the guard on night duty heard hammering sounds and loud booms but saw nothing to account for the noises.³⁵ These sounds could have been attributed to the rebar breaking inside the concrete structure,³⁶ which explains why nothing could be seen. At 1:15 AM, the guest parking area and half the pool deck collapsed into the garage below.³⁷ Internal log revealed the fire alarm triggered at the time the structure collapsed but witnesses who were interviewed did not hear the sounds of the alarm, insinuating the system malfunctioned.³⁸ The remaining structure of the building held for seven minutes after the pool deck collapsed.³⁹ Witnesses recalled the feeling of their floors moving back and forth, similar to that of an “unstable ‘folding table.’”⁴⁰ Others felt the building shudder and watched as new cracks formed, splitting the walls of their home in half.⁴¹ Then, the tower collapsed.

Records during the investigation revealed water and plant roots damaged the structure between the pool deck and structural perimeter wall.⁴² The design was “inadequate for such a critical part of the structure.”⁴³ Post-collapse photos showed the steel connections broke and the pool deck sheared off the wall minutes before the tower fell.⁴⁴ However, the design plans near the planters and guest parking lot did not show any steel connections and instead were filled with gravel.⁴⁵ This part of the structure pulled off the top of the wall rather than

³⁰ Blaskey, *supra* note 10

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* (photos after collapse revealed fractured rebar).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Blaskey, *supra* note 10

⁴⁵ *Id.* (during investigations, photos revealed planters crashed through deck where an engineer considered including beams to bolster slab but ultimately left them out of final design).

shearing off, “indicating a proper connection didn’t exist in that area either due to poor construction, damage or degradation.”⁴⁶ With the pool deck collapse, the connection clamping the tower in place no longer existed.⁴⁷ As a result, “81 homes were reduced to a pile of rubble” and 98 lives were lost.⁴⁸ Investigations to find specific answers and prevent another tragedy are underway.⁴⁹ The findings “will affect millions of people living in high-rise condos around the world who have been left with one terrifying question. How many of them are living in a similar house of cards?”⁵⁰

II. EXPLANATION OF BUILDING CODES

Some of the most important aspects of society are addressed through building codes, such as public health, safety, and welfare and the protection of investment value.⁵¹ Building codes are laws enacted by federal, state, and local governments that provide minimum requirements for the structure, plumbing, electrical, ventilation, and any other aspects that involve designing and constructing residential and commercial buildings.⁵² Fundamentally, codes are aimed at protecting buildings and the people in them.⁵³

Most jurisdictions do not create their own building codes.⁵⁴ Instead, they use the model codes produced by the International Code Council (ICC).⁵⁵ The ICC streamlines building regulations into a single model of codes and provides a baseline for building safety.⁵⁶ Codes are developed by established scientific and engineering principles and the expertise of code officials, builders, designers, and manufacturers are taken into account.⁵⁷ The development process is

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Ellen Vaughan & Jim Turner, *The Value and Impact of Building Codes*, ENV’T AND ENERGY STUDY INST. (Sept. 30, 2013), <https://www.eesi.org/papers/view/the-value-and-impact-of-building-codes#4>.

⁵² *Understanding Building Codes*, NAT’L INST. OF STANDARDS AND TECH. (June 21, 2022), <https://www.nist.gov/buildings-construction/understanding-building-codes>.

⁵³ Vaughan & Turner, *supra* note 51.

⁵⁴ NAT’L INST. OF STANDARDS AND TECH., *supra* note 52.

⁵⁵ *Id.*

⁵⁶ Vaughan & Turner, *supra* note 51.

⁵⁷ *Id.*

designed to ensure societal goals; that is, to promote public safety and economic value.⁵⁸

The ICC's model building codes include separate codes for residences and others for new and existing commercial buildings.⁵⁹ The model codes are updated every three years based on industry standards.⁶⁰ Property law is reserved for state and local authorities, so thousands of jurisdictions have the right to adopt their own building codes.⁶¹ Once a building code is enacted by state or local governments, these codes become the rulebook for that particular jurisdiction's construction industry and primary mechanism to ensure new developments are up-to-date.⁶² States may leave it up to local governments to select their own building codes or it may enact codes which provide uniform requirements across the entire state and leave it to local governments to adopt the uniform code as-is or make only strengthening adjustments.⁶³ However, the absence of statewide uniform codes leads to conflicting requirements in neighboring jurisdictions resulting in different levels of strictness or quality of construction.⁶⁴ Rather, when engineers, designers, and manufacturers can rely on one set of building codes, it "contributes to the resiliency of buildings and help[s] maintain quality of life and property values, and make[s] it easier for appraisers, lenders, and buyers to assign appropriate values to the properties."⁶⁵ Furthermore, insurance companies support statewide building codes so that certain jurisdictions are not less vulnerable to the effects of severe weather or catastrophic events, which "leads to fewer claims, a healthier industry and less need for public or private disaster relief."⁶⁶

After building codes are adopted, jurisdictions commonly provide a phase-in period to educate and train the industry.⁶⁷ Enforcement of building codes is generally initiated when an application for construction or remodeling is submitted to code

⁵⁸ *Id.*

⁵⁹ NAT'L INST. OF STANDARDS AND TECH., *supra* note 52.

⁶⁰ *Id.*

⁶¹ Vaughan & Turner, *supra* note 51.

⁶² *Id.*

⁶³ David Cohan, *How Are Building Codes Adopted?*, OFF. OF ENERGY EFFICIENCY & RENEWABLE ENERGY (Sept. 19, 2016), <https://www.energy.gov/eere/buildings/articles/how-are-building-codes-adopted>.

⁶⁴ Vaughan & Turner, *supra* note 51.

⁶⁵ Vaughan & Turner, *supra* note 51.

⁶⁶ *Id.*

⁶⁷ *Id.*

officials.⁶⁸ Permits for construction of new buildings or modification of existing buildings are issued to those who are in compliance with building codes.⁶⁹ Even while construction is ongoing, code officials are responsible for making necessary inspections to ensure building code compliance.⁷⁰ Documentation is maintained throughout the process to provide a valuable resource if questions or concerns arise during or after the construction phase.⁷¹ Along with code officials, all sorts of inspectors, such as building, mechanical, electrical, plumbing, fire prevention, and housing inspectors need to be familiar with existing building codes to ensure and promote legal compliance.⁷²

III. OVERVIEW OF FLORIDA'S BUILDING CODE

In 1974, Florida's legislature adopted a state minimum building code and required local governments to enforce the code by ensuring minimum standards for the public's health and safety.⁷³ Local governments were permitted to choose among four different building codes and could amend and enforce their local codes as they desired.⁷⁴

The Florida legislature amended its building code in 1998 to create a single minimum standard code that is enforced by local governments.⁷⁵ The Florida Building Code is updated every three years, may be amended annually, and supersedes all local building codes.⁷⁶ However, local governments may amend the minimum standards enacted by the state to be more restrictive.⁷⁷ The Code draws upon the national models developed by the ICC to "construct safe, sustainable, affordable and resilient structures."⁷⁸ Yet, the Code

⁶⁸ Tara Lukasik, *Bring on Building Safety: Code Enforcement Explained*, BUILDING SAFETY J. (Apr. 30, 2018), <https://www.iccsafe.org/building-safety-journal/bsj-dives/bring-on-building-safety-code-enforcement-explained/>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Overview of the Florida Building Code*, FLA. HOUS. FIN. CORP., <https://www.floridahousing.org/docs/default-source/aboutflorida/august2017/august2017/tab4.pdf> (last visited Apr. 5, 2023).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* ("All 50 states have adopted the ICodes" which is "a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members.").

allowed builders flexibility in the means and materials used to meet various compliance standards.⁷⁹

When powerful and destructive Category 5 Hurricane Andrew struck South Florida in 1992, Florida had to take a hard look at its existing building code and enforcement process.⁸⁰ The existing codes and poor enforcement wreaked havoc on homeowners, developers, and consumer interests in Florida real estate.⁸¹ As a result of Andrew, Florida experienced its worst insurance crisis in history.⁸²

In 2008, Florida implemented the requirement of structural integrity inspections of condominiums over three stories high, but the statute was repealed just two years later after condominium associations complained about the costs of the inspections.⁸³ In fact, no Florida state law required condominium associations to repair a structural deficiency when it was discovered.⁸⁴ Essentially, Florida had “a hands-off approach” when it came to structural integrity.⁸⁵ Once a condominium was occupied, the only kind of state oversight of condominium safety was the inspection of elevators and fire extinguishers.⁸⁶

Miami-Dade County, where Champlain Towers South was located, instituted a 40-year recertification inspection program, but only after a building in downtown Miami collapsed in 1974, killing seven people.⁸⁷ This inspection applied to commercial and residential buildings that were at least 40 years old.⁸⁸ Neighboring Broward County followed suit over three decades later but “no other county in Florida requires post-occupancy structural inspections of

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Robert H. Jerry, II, *The Collapse of Champlain Towers Was a Regulatory Failure*, THE REGUL. REV. (July 19, 2021), <https://www.theregreview.org/2021/07/19/jerry-collapse-champlain-towers-south-regulatory-failure/#:~:text=A%202018%20engineering%20report%20on,why%20extensive%20repairs%20were%20necessary.>

⁸⁴ *Id.*

⁸⁵ Jeffrey Schweers, ‘It Takes a Tragedy’: Florida’s Hands-Off Approach to Condo Regulations Tested After Surfside, TALLAHASSEE DEMOCRAT (July 4, 2021), [https://www.tallahassee.com/story/news/local/state/2021/07/02/surfside-miami-condo-collapse-florida-aging-condos-not-require-inspections/7811000002/.](https://www.tallahassee.com/story/news/local/state/2021/07/02/surfside-miami-condo-collapse-florida-aging-condos-not-require-inspections/7811000002/)

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* (Champlain Towers South collapsed the year it was due for its recertification inspection).

condominiums.”⁸⁹ This clearly was insufficient to ensure the most important goal of building codes – preserving human life. Unfortunately, it took a tragedy to see change in Florida’s Building Code laws.

IV. ENACTMENT OF SENATE BILL 4-D

Responding to the horrific disaster, state lawmakers passed Florida Senate Bill 4-D – Building Safety. Although, the enactment of the bill only came after Florida’s legislature was facing criticism from the absence of legislation in building safety earlier in the year because of the Champlain collapse.⁹⁰ The bill requires inspections for condominium and cooperative association buildings, increases the rights of current and prospective unit owners to access information relating to the condition of the building, and demands associations to retain fund reserves for maintenance and repairs of such buildings.⁹¹

Specifically, the bill requires condominiums that are three stories or more in height to have “milestone inspections” of the buildings structural integrity by an architect or engineer when a building reaches 30 years of age and every 10 years thereafter, or if the building is located within three miles of the coastline, 25 years of age and every 10 years thereafter.⁹² The previous requirement was a 40-year inspection, so if, as a result of the enactment of this bill, a building is required to complete a 30-year inspection (certificate of occupancy was issued on or before July 1, 1992), inspection must be completed before December 31, 2024.⁹³ Once local agencies send notice of an inspection, the building must complete phase one of the inspection within 180 days.⁹⁴ Phase one is a visual inspection of the building for “substantial structural deterioration.”⁹⁵ “‘Substantial structural deterioration’ means substantial structural distress that negatively affects a building’s general structural condition and integrity.”⁹⁶ If

⁸⁹ *Id.*

⁹⁰ Schwartz & Koushel, *supra* note 2.

⁹¹ S.B. 4-D, 2022 Leg., 3rd Spec. Sess. (Fla. 2022).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Schwartz & Koushel, *supra* note 2.

⁹⁶ Florida Senate Bill 4-D (“The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.”).

there is evidence of “substantial structural deterioration” from the phase one inspection, a phase two milestone inspection is required.⁹⁷ A phase two inspection involves possible destructive or nondestructive testing and is only required if “substantial structural deterioration” is found during phase one.⁹⁸ When results of a report determine that a building has structural deficiencies and the association fails to submit proof that repairs are scheduled or have begun within at least 365 days of the phase two inspection report, local building enforcement agencies must determine whether such building is safe for human occupancy.⁹⁹ The results of the milestone inspection report must be provided to local building officials, the condominium associations, and a summary must be sent by mail or email to unit owners and prospective owners.¹⁰⁰

Regarding the fund reserve requirements for the continued maintenance and repairs of the building, the bill requires associations to complete a structural integrity reserve study every ten years for a building that is three or more stories in height.¹⁰¹ A structural integrity reserve study is “a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.”¹⁰² The budgets of condominium associations must include reserve accounts for capital expenditures and deferred maintenance.¹⁰³ Additionally, the association may adjust reserve amounts annually to take into account any changes in estimations.¹⁰⁴ Most importantly, the bill does not allow for waiver or reduction of reserve accounts.¹⁰⁵

a. *Potential Issues with Senate Bill 4-D*

One major flaw with the milestone inspections required by the enactment of the bill is the ambiguity surrounding condominiums who received their certificate of occupancy after July 1, 1992.¹⁰⁶ These

⁹⁷ *Id.*

⁹⁸ Schwartz & Koushel, *supra* note 2.

⁹⁹ Florida Senate Bill 4-D.

¹⁰⁰ *Id.* (only by email if they have consented to receiving such notices by email).

¹⁰¹ *Id.*

¹⁰² *Id.* (study includes visual inspection, estimated remaining useful life, and estimated costs of maintenance or repairs that exceed \$10,000).

¹⁰³ KBR Legal, *Mandatory Condominium & Cooperative Building Inspections & Non-Waivable Reserve Requirements*, STATE OF FLA. PROP. MGMT. ASSOC. (Dec. 22, 2022), <https://sfpma.com/%EF%BB%BFmandatory-condominium-cooperative-building-inspections-non-waivable-reserve-requirements-senate-bill-4-d/>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Schwartz & Koushel, *supra* note 2.

buildings are at, near, or have already passed the 25- or 30-year inspection requirement depending on when their certificate of occupancy was issued. Some of these buildings will need to complete an inspection much earlier than originally anticipated which come with very real issues. The milestone inspections are required to be performed by licensed architect or engineers authorized to practice in Florida.¹⁰⁷ There are roughly 25,000 condominiums that were issued a certificate of occupancy prior to July 1, 1992, and this excludes those buildings that are within three miles of the coastline and are about to turn or recently turned 25 years old.¹⁰⁸ Assuming architects and engineers have additional work other than milestone inspections prior to December 31, 2024, it is unrealistic to believe there are enough days for these buildings to complete the necessary milestone inspections.¹⁰⁹ Even more alarming is that the bill does not explicitly state it applies retroactively.¹¹⁰ Not only does it seem that condominiums will fail to meet certain deadlines based on logistics, but they may also find loopholes to determine that an inspection requirement does not apply to them.

Another potential glitch in the bill is that it requires an inspection of buildings three stories and higher. However, what if a three-story building has a parking garage on the first story and inhabited portions on the second and third stories?¹¹¹ Does the term “story” or “stories” include parking structures, or what if the parking is below ground?¹¹² Is the building excluded from milestone inspection requirements in these cases? The language of the bill does not provide a clear answer. Further complicating the issue, when there is a mixed-use building with commercial and residential components, but a portion of the building is exempt from the condominium association, is the entire building subject to the milestone inspections or only the portion which is designated as part of the condominium?¹¹³ Although these nuances may seem trivial, it is crucial for a new law to be explicitly clear to prevent misapplication or avoidance.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (courts usually require an affirmative statement).

¹¹¹ *Id.*

¹¹² See Jefferey Rembaum, Esq. & Kaye Bender Rembaum, *Senate Bill 4-D Glitches That Must Be Addressed*, CAMPBELL PROP. MGMT. (Dec. 8, 2022), <https://www.campbellpropertymanagement.com/blog/senate-bill-4-d-glitches-that-must-be-addressed>.

¹¹³ *Id.*

Even more concerning is that the bill assumes a “substantial structural deterioration,” which is completed during phase one and can only be determined through a visual inspection of the building.¹¹⁴ However, it is extremely difficult or practically impossible to perform a visual inspection of such deterioration without destructive testing, which is completed in phase two.¹¹⁵ Therefore, to determine for certain whether or not there is substantial structural deficiencies, destructive testing must be done. Yet, such testing will not be done on the structure if it is determined there are no signs of visual deterioration. Imagine, for example, there are structural deficiencies in the foundation of a building. How will an inspector be able to visually see signs of deterioration in such a vital part of the structure of a building? If no such signs are visually present, destructive testing is not completed. The legislature, therefore, ignores this circular reasoning and the realities of proper building inspections.

Many other issues will likely emerge from the confusion that arises with an unclear legislative bill. These examples provide only potential issues and show how they can become very complicated very quickly. Although the enactment of the bill comes from a place of promoting and ensuring human safety, the ambiguity of the bill does not provide clear direction or even provide an understanding of how safety is promoted. For example, why is three the magic number? Why are condominiums less than three stories exempt from inspection requirements? It is obvious for the human mind to conceive of a possible situation in which a three-story condominium has major structural deficiencies and collapses, even if it is not probable. It is uncertain why families living in such dwellings should not have the peace of mind of ensuring their safe haven is in fact safe.

V. EFFECTS OF THE ENACTMENT OF SENATE BILL 4-D

a. *Impact to Consumers*

Simple economics reveal that consumers will be financially affected by the enactment of Senate Bill 4-D. The new inspection process requires condominium owners to dish out thousands, if not hundreds of thousands of dollars to pay for maintenance and repairs of

¹¹⁴ See Kevin M. Koushel, *Time to Pay the Piper: New Mandatory Reserve Requirements for Florida Condominiums*, BILZIN SUMBERG (Nov. 16, 2022), <https://www.bilzin.com/we-think-big/insights/publications/2022/11/new-mandatory-requirements-for-florida-condos>.

¹¹⁵ *Id.* (don't get to phase two unless it is determined in phase one that further inspection is necessary).

their building.¹¹⁶ The reason these assessments will be so large is primarily due to the fact that condominium associations in the past were not required to have a properly funded reserve.¹¹⁷ Before the enactment of this bill, Florida law allowed condominiums to waive or reduce reserve contributions through a membership vote.¹¹⁸ Unit owners usually voted for waiver or reduction because it kept assessments as low as possible.¹¹⁹ Even though it is inevitable that condominiums will have to spend money maintaining or repairing the building at some point, unit owners exercised their vote in favor of waiver or reduction because they contemplated selling their unit before these major repairs occurred.¹²⁰ In other words, because unit owners did not believe they would directly benefit from the improvements due to selling their unit, they kicked the assessment to subsequent owners.¹²¹ Even if they did not sell in the future, they at least deferred payment for themselves.¹²² Hence, “many condominiums are severely underfunded.”¹²³

The bill requires that condominiums maintain a certain amount in their reserves and because unit owners have voted to waive or reduce reserves, associations will impose huge assessments on condominium owners to comply with the new law. In addition to replenishing the reserves, associations will tack on other expenses for repairs of building deterioration identified through the new inspection process.¹²⁴ This will be very expensive for many condominium associations as only 5-10% have properly funded their reserves in past years and about 50% have no reserves at all.¹²⁵

Historically, condominiums attracted first time home buyers because condos have been among one of the most affordable housing options since single family homes are typically more expensive.¹²⁶ As a result of association-imposed assessments combined with inflation

¹¹⁶ See Dona Stewart, *A Year After the Surfside Collapse, Florida's Condo Safety Act Impacts Housing Affordability*, NEW AMERICA (Mar. 16, 2023), <https://www.newamerica.org/future-land-housing/blog/a-year-after-the-surfside-collapse/>.

¹¹⁷ See Koushel, *supra* note 114.

¹¹⁸ *Id.*

¹¹⁹ Koushel, *supra* note 114.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* (time value of money demonstrates that a consumer would rather have access to funds now and defer payment to invest their money).

¹²³ *Id.*

¹²⁴ Koushel, *supra* note 104; Stewart, *supra* note 116.

¹²⁵ Stewart, *supra* note 116.

¹²⁶ *Id.*

and rising insurance premiums, consumers may be stretched too thin and will no longer be able to afford their homes.¹²⁷ Condominium owners will be forced to sell when their homes become unaffordable. The question is to who? Very few buyers are willing to purchase condominiums facing such large assessments.¹²⁸

Take, for example, Murano at Portofino, a 189-unit building in Miami Beach, Florida. The condominium is currently facing a \$30 million special assessment.¹²⁹ This averages at roughly \$160,000 per unit owner.¹³⁰ Unit owners in other condominiums are facing assessments between \$30,000 to \$50,000.¹³¹ Such large assessments will exasperate the housing affordability crisis, which is already prevalent in South Florida.¹³² When homeowners can no longer afford these large assessments or are unable to borrow they will have to sell or worse, abandon their homes.¹³³ Wealthy buyers will snag up these condominiums and resell them at a high ticket price, worsening housing affordability.¹³⁴

Even if condominium owners are somehow able to afford high assessments, they might elect to terminate their condominium if they see no return on their investment.¹³⁵ Terminating an existing condominium is governed by state law and negates the Condominium Declaration that established condominium units.¹³⁶ The property is returned to a single unified parcel of real estate with one owner of the entire property.¹³⁷ Therefore, this process terminates the rights of individual unit owners, and the new owner of the entire property becomes the owner of all the units. However, termination of ownership

¹²⁷ Stewart, *supra* note 116.

¹²⁸ *Id.*

¹²⁹ Roger Valdez, *How Will Florida Condo Safety Law Impact Housing?*, FORBES (Jan. 5, 2023), <https://www.forbes.com/sites/rogervaldez/2023/01/05/will-florida-condo-safety-law-cause-financial-collapse/?sh=36eac51b46ad>.

¹³⁰ *Id.* (\$30 million divided by \$160,000 equals \$158,730.16).

¹³¹ Stewart, *supra* note 116.

¹³² Schwartz & Koushel, *supra* note 2.

¹³³ Valdez, *supra* note 129.

¹³⁴ *Id.* (if wealthy developers are able to get their hands on the entire building, they may revert the building to apartments and charge expensive rent).

¹³⁵ Schwartz & Koushel, *supra* note 2.

¹³⁶ Eben Hansel & Roger Winston, *Condominium Termination: A Potential Path for Repurposing and Redeveloping Ageing Condominium Buildings*, JD SUPRA (Jan. 13, 2023), <https://www.jdsupra.com/legalnews/condominium-termination-a-potential-3114705/>.

¹³⁷ *Id.*

rights of individual unit owners may go against the wishes of other condominium unit owners or be at a price they believe is unfair.¹³⁸

Looking at Champlain Towers South, the condominium was facing repairs ranging from \$80,000 to over \$300,000 per unit.¹³⁹ It is doubtful unit owners would have seen significant returns on the resale of their unit factoring in these large assessments.¹⁴⁰ Other condominiums facing comparable assessments and unsustainability due to lack of reserves may be thinking about termination. As a result, unit owners may be forced to surrender their homes and be thrown into a hot real estate market.

The enactment of Senate Bill 4-D brings alarming consequences to consumers. However, it is unlikely the legislature intended for condominium owners to part with their life savings or face financial ruin simply to keep their homes.¹⁴¹ It is even more unlikely the legislature predicted many unit owners would be displaced from their homes as a result of this new bill. Ensuring the safety of Florida's condominium owners is unquestionably a critical goal, especially after the collapse of a building killing 98 people. Nevertheless, as it is now, Florida's bill will ensure consumers are driven out of the homes it is meant to protect.

b. Impact on the Real Estate Market

In general, South Florida housing prices are skyrocketing. Many people are moving to sunny South Florida for the warm weather and lack of state income tax.¹⁴² However, even those who are high earners are weary of the real estate market and are giving renting a second look.¹⁴³ Consumers making over six-figures who can afford purchasing a home are still not committing because of the steep prices.¹⁴⁴ This has led the rental market to become more expensive and

¹³⁸ Hansel & Winston, *supra* note 136.

¹³⁹ Schwartz & Koushel, *supra* note 2.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Deborah Acosta, *Some Miami Area Condo Prices Under Pressure After Surfside Building Collapse*, WALL ST. J. (June 28, 2022, 11:21 AM), <https://www.wsj.com/articles/some-miami-area-condo-prices-under-pressure-a-year-after-surfside-building-collapse-11656429690>.

¹⁴³ Trish Christakis, *High Earners Priced Out of South Florida Housing Market*, CBS NEWS (Mar. 15, 2023, 6:09 AM), <https://www.cbsnews.com/miami/news/high-earners-priced-out-of-south-florida-housing-market/>.

¹⁴⁴ *Id.*

more competitive.¹⁴⁵ In other words, “the cost to live in small apartments is soaring.”¹⁴⁶

While the rest of the real estate market is sky-high, South Florida condominiums are seeing a decline in sale price.¹⁴⁷ Unsurprisingly, lower prices reflect safety concerns and the potential imposition of special assessments.¹⁴⁸ There is a divide in the real estate market. New luxury buildings are seeing price increases but older condominiums, especially those near the ocean, are experiencing the opposite.¹⁴⁹ The new bill will have widespread impact on the condominium market, especially since more than two-thirds of Miami’s condominiums are 30 years or older.¹⁵⁰

Consumers who currently live in a condominium are experiencing declines in their property values. However, selling is not a practical solution because of steep real estate prices in purchasing and renting. Yet, if condo owners do not sell, they fear unaffordable assessments or living in a structurally unsound building. On the other hand, consumers living anywhere but older condominium buildings are seeing huge returns on their investment. In sum, South Florida consumers are at opposite ends of the spectrum depending on the type of investment they made years ago. Whether or not one is on the favorable end stems from a tragic collapse and the enactment of Senate Bill 4-D as a result of that collapse.

VI. PROPOSALS TO PROTECT CONSUMERS FACING THE EFFECTS OF SENATE BILL 4-D

a. Oversight Requirement

A big part of the reason Senate Bill 4-D will have massive implications is due to the way condominium associations are regulated and maintained. While Florida’s building codes have been updated throughout the years to become “arguably the strictest in the nation,” it only applies to the construction period.¹⁵¹ Once a building is turned

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Acosta, *supra* note 142. (Miami Beach condominium prices are down 22%).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Clayton Park, *Designed to Fail: How Florida’s Lack of Condo Board Oversight Could Mean Another Surfside*, USA TODAY (Aug. 21, 2021, 4:50 PM), <https://www.usatoday.com/story/news/nation/2021/08/27/surfside-collapse-miami-condo-disaster-lack-florida-oversight/5599039001/?gnt-cfr=1>.

over to condominium associations after completion, it is the association's responsibility to maintain and repair the building.¹⁵² However, condominium associations are comprised of a committee of non-experts, so when unit owners object to assessment increases, association board members are inclined to give them what they want.¹⁵³ While condominium associations are required to maintain the building and keep financial records, among other things, there is no requirement for periodic structural inspections or for making repairs in a *timely* manner.¹⁵⁴ Furthermore, as previously mentioned, condominiums previously had the option to waive or reduce their financial reserves.¹⁵⁵

Florida's condominium laws provide a "hands-off" approach. However, it is clear from the circumstances this approach is not doing its job – ensuring public safety. "The legislature has a habit of deregulation, but safety is something that should be regulated."¹⁵⁶ "Right now, the state's condo laws and building codes are very much in favor of developers and buildings to be not what is the safest method, but what's the cheapest. That's because developers and buildings have a loud voice."¹⁵⁷

The State of Florida needs to require oversight of condominium associations. This will shield against fraud and abuse and make sure essential building projects are completed to ensure safety. Homeowner association boards do not have the skill or capacity to manage major projects on their own,¹⁵⁸ so there needs to be professional oversight. Florida coastal communities include more than a thousand condominiums that are three stories or taller and approaching 40 years of age.¹⁵⁹ The number of ageing condominiums and the prevalence of deferred repairs could be both physically and financially deadly. Condominium association oversight will ensure that current problems in any given building do not persist, and money is not spent with no results.¹⁶⁰ Additionally, oversight will prevent condominium associations from underfunding their reserves and deferring repairs until it's too late.

¹⁵² *Id.*

¹⁵³ Andrea J. Boyack, *Structural Precarity and Potential in Condominium Governance Design*, 75 ARK. LAW REV. 291, 318 (2022).

¹⁵⁴ Park, *supra* note 151.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Park, *supra* note 151.

¹⁵⁸ Valdez, *supra* note 129.

¹⁵⁹ *Id.*

¹⁶⁰ *See Id.*

b. Tax Relief

Floridians cannot be required to pay for something they simply cannot afford, and buildings cannot become unsafe. To get the best of both worlds, Florida can provide tax reliefs for condominium associations and their unit owners to reduce their tax liabilities. As guidance, Florida can look to current green tax incentives. The Inflation Reduction Act of 2022 provides federal tax credits and deductions to Americans who make their homes and businesses more energy efficient.¹⁶¹ This tax relief provides an incentive to mitigate environmental impacts while delivering financial benefits to consumers.

The Florida legislature should follow suit. This would reduce the financial impact to consumers while making their homes safer. “Florida’s economy has consistently outpaced the nation” and “has been fiscally responsible,” so they are in a “good position to provide meaningful relief for families.”¹⁶² Although this proposal may not be satisfactory on its own because of the deferred nature of the benefit, in combination with the following proposition, it can provide significant support to condominium owners.

c. Local Government or Quasi-Government Entities Provide Requisite Capital

It is impossible to expect consumers to dish out thousands of dollars in a short period of time. The average American by 30-years-old has roughly \$11,250 in their savings account and by 40-years-old, \$27,900.¹⁶³ Therefore, the average American consumer simply cannot afford to pay large assessments imposed on them. Additionally, the Florida legislature cannot expect the enactment of this bill to have only positive results without its help.

A much more practical approach involves local government or quasi-government entities to provide the capital necessary to maintain the structural integrity of condominiums in need of massive improvements and that have inadequate reserves. These government

¹⁶¹ *Federal Income Tax Credits and Incentives for Energy Efficiency*, ENERGY STAR (Dec. 30, 2022), https://www.energystar.gov/about/federal_tax_credits.

¹⁶² *Governor Ron DeSantis Signs Largest Tax Relief package in Florida’s History*, RON DESANTIS (May 6, 2022), <https://www.flgov.com/2022/05/06/governor-ron-desantis-signs-largest-tax-relief-package-in-floridas-history/>.

¹⁶³ Rebecca Lake, *Average Savings by Age*, FORBES (July 15, 2022, 2:34 PM), <https://www.forbes.com/advisor/banking/savings/average-savings-by-age/>.

agencies can set up a sort of payment plan in which condominium owners are not subject to a hefty lumpsum payment. While Miami-Dade County began offering an interest-free loan to residents funding an assessment, four months into the program, the \$9 million set aside has already been exhausted.¹⁶⁴ Further, the program limits the loan to \$50,000 and only those making \$95,620 or less qualify.¹⁶⁵ While this loan initiative is a step in the right direction, it is still inadequate to deal with the impact. It is imperative Florida government agencies provide financial assistance to avoid consumers drowning in debt, losing their homes, and further fueling the housing affordability crisis.

CONCLUSION

Senate Bill 4-D is well-intentioned legislation. Its main purpose is to ensure safety and sustainability. However, the bill comes with unintentional implications affecting consumers, especially condominium owners. While many of those affected by the enactment of Senate Bill 4-D will not be able to fund large assessments, which can sometimes reach six-figures, to replenish reserves or maintain the structural integrity of their building, safety must come first. However, Floridians cannot be expected to comply with the requirements of the bill and further its goal without sufficient condominium oversight, incentivization, and financial assistance from governmental agencies.

¹⁶⁴ Deborah Acosta, *Miami Offers Interest-Free Loans to Condo Owners*, THE WALL ST. J. (Apr. 4, 2023, 8:00 AM), <https://www.wsj.com/articles/miami-offers-interest-free-loans-to-condo-owners-53189e9f> (funded by a fee charged on sale of commercial real estate in Miami-Dade County).

¹⁶⁵ *Id.*