

**Report of the Florida Bar RPPTL Condominium Law
and Policy Life Safety Advisory Task Force**

October 12, 2021



DEDICATION

This report of the Condominium Law and Policy Life Safety Advisory Task Force is dedicated to the memory of the 98 individuals who lost their lives in the Champlain Towers South building collapse tragedy and to their families, loved ones and friends, all of whom have suffered a tragedy of immeasurable proportion. While no findings or implementation of recommendations can replace the lives cut short or the memories of loved ones lost, the efforts of the Task Force are first and foremost dedicated to the memories of those lost in this tragedy.

Additionally, this report is dedicated to all the first responders who worked tirelessly and gave their utmost to search, rescue and save any lives to be saved, as well as recover with deep respect those lost in this tragedy.



William P. Sklar
Chair

TASK FORCE FORMATION

Within two days of the Champlain Towers South tragedy, discussions occurred among the leadership of the Condominium and Planned Development Committee (“Committee”) of the Real Property, Probate and Trust Law (“RPPTL”) Section of The Florida Bar, specifically outgoing Committee Co-Chair, William Sklar, Committee Co-Chair Joe Adams and incoming Committee Co-Chair, Peggy Rolando, discussed the role of the Committee, RPPTL, and the Florida Bar regarding the public policy issues emanating from the building collapse tragedy. It became immediately clear that, while the Committee was not capable of investigating any specific factual aspect of the tragedy or specific role of any party related to the building collapse, condominium law and policy issues would be addressed, including those relating to the governance and operation of residential condominium associations, building inspections, and financial issues regarding deferred maintenance and capital repairs of condominium buildings.

Committee Co-Chairs Adams and Rolando requested on July 1, 2021 that William Sklar serve as Chair of a Task Force consisting of a diverse group of condominium attorneys with experience in the formation, development, governance and operational issues of residential condominiums and representing a broad spectrum of interested groups, including condominium associations, boards of directors, unit owners, developers, and others involved in the development, governance and operation of condominium projects. In consultation, Adams, Rolando and Sklar selected and invited 5 other distinguished practitioners of condominium and community association law to be members of the Task Force. From its inception, the Task Force made clear that it was not investigating either a specific cause of the Champlain Towers South Condominium building collapse nor the role of any particular party relative to that tragic event. Further, the Task Force is strictly advisory and not a decision-making body and does not act on behalf of the Florida Bar nor the RPPTL Section.

The Task Force held its organizational meeting on July 9, 2021, at which it adopted its Mission Statement, and conducted its first substantive meeting on July 22, 2021 in conjunction with the regularly scheduled Committee meeting at The Breakers in Palm Beach, Florida. The Task Force members are William P. Sklar, Chair, Tallahassee and West Palm Beach; Joseph E. Adams, Ex Officio, Fort Myers and Naples; Margaret Rolando, Ex Officio, Miami; Ivette Machado Blanch, Coral Gables; Christopher Davies, Naples; Peter Dunbar, Tallahassee; Michael Gelfand, West Palm Beach; and Jose “Joe” Rodriguez, Miami. The Task Force was supported by Committee Co-Vice Chairs, Allison L. Hertz, Palm Beach Gardens, serving as Reporter, and, Alexander Dobrev, Orlando, providing technical and data support.

MISSION STATEMENT

The mission of the Task Force is to engage in information-gathering and fact-finding through the review all aspects of Florida Condominium law, development, construction, association operations, and maintenance to determine if changes or additions to legislation and/or regulations could prevent or minimize the likelihood of another tragedy like the Champlain Towers South condominium collapse, or similar tragedies in the future. The Task Force is not a decision-making authority and will not be investigating the cause of the Champlain Towers South building collapse.

METHODOLOGY

Chapter 718 of the Florida Statutes, the Florida Condominium Act (“the Act”) imposes on the condominium association the responsibility to maintain the common elements and certain other portions of the condominium property. F.S. 718.113(1). Indeed, there have been numerous Florida appellate decisions upholding the right of the association through its board of directors to undertake such maintenance, to protect the common elements and to alter the common elements or other appurtenances to condominium units to maintain and protect the common elements. *Tiffany Plaza Condo. Ass’n, Inc. v. Spencer*, 416 So. 2d 823 (Fla. 2d DCA 1982), *Ralph v. Envoy Point Condo. Ass’n, Inc.*, 455 So. 2d 454, 455 (Fla. 2d DCA 1984), and *Cottrell v. Thornton*, 449 So. 2d 1291 (Fla. 2d DCA 1984). Additionally, Section 718.301(4)(p) of the Act requires the developer to deliver a report prepared by a Florida licensed engineer or architect describing the condition of 13 major components of the condominium property. The report is due at the time the developer turns over control of the association to the non-developer unit owners.

The Task Force believes that the condition report delivered at the time of turnover¹ to the board of directors elected by the unit owners should serve as the standard to guide the board of directors regarding maintenance and inspection of the various components in the vertical condominium and cooperative buildings. In cases where an association does not have a turnover inspection report (these were first required by the Act in 2008), an alternative source of base information is needed. The Task Force also recognizes that the Act, together with the governing documents of each respective condominium and cooperative association, grant boards of directors broad discretion relative to methods and timing of addressing deferred maintenance and capital replacement of condominium property. Such discretion is one area of inquiry of the Task Force, together with: the scope and timing of inspection, credentials of inspectors; the role of local government building officials; establishment and funding of reserves for deferred maintenance and capital replacement of components of the building; review of the current capital replacement reserve requirements under Section 718.112(2)(f)2.a. of the Act; the need for reporting on a regular basis of the condition of the components of the condominium building to unit owners, and perhaps third parties, such as the local building officials or the Division of Florida Condominiums, Timeshares and Mobile Homes (“Division”) of the Department of Business and Professional Regulation of the State of Florida (“DBPR”); and the role of managers and consultants who provide support to associations in these matters.

The Task Force actively sought input from credentialed experts relative to each of these subject matter areas. In its organizational and early meetings, the Task Force determined to seek advice in the form of presentations from qualified reserve analysts, structural engineers, insurance industry experts with particular experience providing insurance to condominium associations, local government building officials, the largest industry group representing boards of directors of condominium associations, the largest industry representative of Florida licensed community association managers (“CAM’s”), Florida

¹ Such alternative source of base information is in the form of an inspection report later addressed in the Task Force's recommendation.

Association of Realtors, resiliency engineering experts, certified public accountants and the Division as interested parties.

Appendix A to this Report contains the chronology of meetings of the Task Force and identifies those groups and individuals who presented at Task Force meetings.

The Task Force permitted 23 public officials and staff members of the Florida Senate, the Florida House, the Florida League of Cities and the Department of Business and Professional Regulation, among others, to observe during presentations by invited guests. A list of those invited observers is attached as Appendix B to this Report. Biographies of the Task Force members, Task Force Reporter and Technical Advisor are attached as Appendix C to the Report.

Each member of the Task Force was invited to ask questions of each presenter. Copies of the presentation outlines, materials, exhibits and biographical information of each presenter are contained in Appendix D to this Report. The Task Force also requested and received comments and suggestions from the Committee and the public through both a web-portal and by email. The comments received from the web-portal are summarized in Appendix E.

In total, the Task Force met 19 times, generally in sessions of 2 hours or longer, commencing on July 9, 2021 at its organizational meeting and concluding with its approval and adoption of the Task Force report and recommendations on October 8, 2021 for presentation to the Governor, President of the Senate and Speaker of the House of Representatives for the state of Florida with copies to the Chair of the Real Property, Probate and Trust Law Section of The Florida Bar and President of The Florida Bar. Experts made their presentations during 7 of the Task Force meetings. The remainder of the meetings through and including its final session, were utilized for debate, analysis, discussion and deliberations of the Task Force and consideration of recommendations to the Florida Legislature and Governor for Florida law and policy changes with the goal of addressing issues of life safety in condominium buildings in the State of Florida.

Based upon information provided by DBPR, there exist approximately 912,376 condominium units in the State of Florida at least 30 years in age, as determined either from their certificate of occupancy or initial filing of the statutorily mandated annual report with the Division. Based upon information received from DBPR, the following breakdown exists as of July 19, 2021.

There are 1,529,764 residential condominium units in the State of Florida operated by 27,588 associations. Of those units, 105,404 are 50 years old or older, 479,435 are 40-50 years old, 327,537 are 30-40 years old, 141,773 are 20-30 years old, 428,657 are 10-20 years old, and 46,958 are 0-10 years old. It is estimated that there are over 2,000,000 residents occupying condominiums 30 years or older in the State of Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.

Cooperative Housing – Chapter 719 of the Florida Statutes. The Task Force recognizes the existence of cooperative residential housing, pursuant to Chapter 719 of the Florida

Statutes. According to data provided by the Division, there are 778 cooperative projects registered with the Division in Florida. Vertical (multi-story) residential development under the cooperative regime was somewhat common in the 1960's and 1970's but subsequently fell into disfavor due to financing limitations and title issues. Most cooperatives created since that time are mobile home communities who have "bought out" a park owner and set up the cooperative form of ownership for their "resident owned community" to avoid extensive and expensive surveying that would be required to create the condominium. The Division's records do not distinguish between vertical cooperatives and mobile home cooperatives. The Task Force recommends that all provisions of this Report be equally applicable to all vertical cooperatives (living units of 2 stories or more) and that appropriate changes to the Florida Cooperative Act, Chapter 719 of the Florida Statutes, also be made.

All statutory citations contained in this Report are from 2021, unless otherwise noted.

HISTORY OF CONDOMINIUMS AND CONDOMINIUM GOVERNANCE

The condominium form of ownership of real property in Florida has been in statutory existence since 1963, when the Florida Legislature enacted then Chapter 711 of the Florida Statutes (Laws of Florida, Chapter 63-35). The unique and defining characteristics of a condominium unit is that each unit owner owns a unit in fee simple and co-owns with all other unit owners an undivided interest in those portions of the condominium outside of the units, known as common elements. Governing this system of common ownership is the condominium association, the entity responsible for the operation of the condominium. Membership in the association is an unalienable right and a required condition of unit ownership.

A condominium is created by recording a declaration of the condominium in the Public Records of the county where the condominium is located. The declaration describes the property submitted to condominium ownership and defines the units and common elements identifying the boundaries of each. The condominium declaration governs the relationships among the condominium unit owners and the condominium association. Pursuant to the declaration, a board of directors or administration of the condominium association is granted broad authority to adopt rules for the benefit of the community and operate the community in accordance with the declaration of condominium and the documents forming the condominium association, namely the articles of incorporation, and bylaws governing the association's administration. The power of the association to maintain the common elements of the condominium has continuously existed from the inception of Florida's Condominium Act (F.S. 711.12(6)) through the present (F.S. 718.113(1)). Condominium associations are creatures of statute and subject to private contract rights created by the governing documents. Associations must be incorporated in Florida as a not-for-profit corporation or for profit corporation (pre-1977 associations could be unincorporated).

As a member of the association, a unit owner lacks the authority to act on behalf of the association. Instead, the condominium association's board of directors, sometimes also referred to as a "board of administration", manages the community's affairs and represents the interests of the association. The board of directors is comprised of individuals who are unpaid volunteers elected by the members of the association (unit owners), after the developer has transferred control of the board to the non-developer unit owners ("transition" or "turnover"). In addition to the power to elect, unit owners have the power to remove directors without cause by majority vote. Association board members are duty bound to enforce the condominium's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners. F.S. 718.113(1). The association's board of directors, its officers, both collectively and individually, owe a fiduciary duty pursuant to section 718.111(1)(a) of the Act to all unit owners who are members of the association. The interpretation of how such a fiduciary duty is implemented in the context of a condominium association's operations typically includes the duty to maintain, duty to protect against foreseeable dangers, duty to insure, duty to abide by the governing documents and law, and, to generally act in the best interests of the members of the

association.

The ability, power and duty to maintain the common elements and a condominium building generally, are generally established in the Act, and are typically defined with greater specificity in the governing documents, especially in the declaration of condominium and bylaws of the condominium association.

ISSUES AND RECOMMENDATIONS

The Task Force finds that the area of inquiry identified below are critical to the preservation of property values, building safety and financial stability of Florida's aging residential condominiums. Indeed, no one factor itself is determinative, but taken together, these factors form the interwoven physical and financial stability of condominium buildings and associations.

Presentations regarding these areas of inquiry were solicited and received from the Florida Association of Structural Engineers, representatives of reputable reserve study analysts, the Florida Association of Building Officials, two insurance industry subject matter experts, a resiliency structural engineer, the Florida Association of Realtors, Community Associations Institute representing governing bodies of condominium associations, CEOMC representing community association managers, and the Secretary of the Department of Business and Professional Regulation.

The Task Force was made keenly aware by most presenters of the inherent conflict existing between the economic realities of operation of a condominium, the need for investment for deferred and long term maintenance and structural repair, and the desires of the unit owners in their election of and direction to boards of directors of condominium associations to manage and operate their condominiums in a cost effective manner, be market-sensitive, avoid special assessments, and avoid excessive or unaffordable charges to unit owners.

To be clear the Task Force is not suggesting that any significant percentage of the over 912,000 30+ year aging condominium units is not well maintained or well managed. No empirical data exists that could be used to reach such a conclusion. However, the Task Force finds the lack of uniform maintenance standards or protocols, and the broad discretion given to boards to determine when, how, and if life safety inspections and necessary repairs should be performed, requires legislative intervention. A determination of what acts or omissions of a director, officer or other person constitute a breach of fiduciary duty is currently left to the courts on a case by case basis. Based upon the significant experience of the members of the Task Force, including those that represent multiple condominium associations, it is believed that the vast majority of residential condominium associations are operated and maintained in a reasonably safe manner, consistent with protecting the life safety of all the residents of each condominium building. That said, the absence of specific requirements for inspection, reporting the results of inspections, and the contents of inspections, should not be left to chance.

It is with these precepts in mind, that the Condominium Law and Policy Life Safety Advisory Task Force makes the following observations and recommendations related to the areas of inquiry studied by the Task Force:

1. **Board of Directors Obligation for Maintenance, Repair and Replacement:**

- a. **Task Force General Findings:** Decision making and authority over the maintenance, repair and replacement of the condominium property including the condominium building generally lies with the board of directors of the association acting on behalf of the unit owners who are members of the association. Directors typically are elected for one or two year terms and may serve up to 8 consecutive years before being required to take a hiatus from board service. Issues of life safety and building condition should be addressed by professionals engaged by the board of directors or community association managers acting at the direction and authority of the board of directors. Standardized maintenance and repair protocols will better protect the health, safety and welfare of residents. The board should not be hindered in performing necessary maintenance, repairs or replacements because of potential exposure or liability of the association for alternative housing and other expenses from unit owners if they need to vacate the building.
- b. **Current Law:**
- i. Section 718.113(1) of the Act provides that maintenance of the common elements of a condominium is the responsibility of the association.
 - ii. Section 718.111(1)(a) of the Act provides that the officers and directors of the association have a fiduciary relationship to the unit owners.
 - iii. Section 718.111(1)(d) of the Act provides that an officer, director, or agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.
- c. **Relevant Considerations:** A board of directors may maintain, repair and replace the common elements in its reasonable business judgement per relevant Florida case law. There are no express maintenance, repair or replacement standards for boards of directors to follow in the Act or in most governing documents. While the board has the duty and authority to maintain the common elements, it has no statutory obligation to inform the unit owners of the building condition. This gap between the information known by the board and that disseminated to the members can undermine the unit owners' understanding of the significance of and need for assessments to fund deferred maintenance. Unit owners and boards may also resist such maintenance because of the cost, lack of reserves, disruption and inconvenience. Boards and unit owners could benefit from widely available guidelines setting forth requirements for such long term, deferred, and where appropriate, structural maintenance to be undertaken relative to improvements to the condominium property. In certain instances,

declarations of condominium will contain “incidental damage” language potentially requiring the association to fund the costs of alternative housing or other expenses if a resident is required to vacate the building.

d. Task Force Recommendations:

- i. The Task Force recommends clarifying and expanding the Act to require timely maintenance, repair and replacement of structural and life safety systems in vertical construction of both condominium and cooperative buildings consistent with and keyed to Section 718.301(4)(p) of the Act. Waterproofing should be added to that section of the statute as a required maintenance component/line item.
- ii. The Task Force recommends amendments to the Act to preclude association liability for alternative housing costs, lost rent or other expenses where residents must vacate for necessary maintenance, repairs or replacements to the condominium property.
- iii. The Task Force recommends that the Act codify, in line with the appellate case decisions cited above, that necessary maintenance of the condominium property not be considered a “material alteration or substantial addition” which might otherwise trigger a unit owner voting requirement.

- e. Other Notes from Task Force:** The Task Force recognizes and encourages the need for transparency by associations in communications by their boards of directors and managers to unit owners and prospective purchasers, and the recommendations in this Report reflect the need for such transparency in the form of disclosure of inspection reports, the condition of the condominium building and status of maintenance of the condominium property.

2. **Special Assessments and Borrowing:**

- a. **Task Force General Findings:** Boards of directors must be able to fund maintenance, repairs and replacements to the condominium property if the boards are to have the tools to fulfill their duties. The Act does not provide clear authority for boards to levy special assessments or borrow money on behalf of the association for maintenance, repairs or replacements. In fact, many governing documents require prior unit owner approval to do so, or may flatly prohibit borrowing. Boards should not be unreasonably hindered in carrying out maintenance, repairs and replacements. Rather, they should be specifically empowered to make assessments and borrow money as appropriate for the specific maintenance, repair and replacement needs of the association.
- b. **Current Law- Special Assessments:** Although the Act addresses notice requirements related to the adoption of a special assessment by a board of directors, the Act does not clearly authorize boards to levy special assessments.
- i. Section 718.103(24) of the Act defines special assessment as any assessment levied against a unit owner other than the assessment required by a budget adopted annually.
 - ii. Section 718.1265(1)(l) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.”
- c. **Current Law- Borrowing:** The Act does not clearly address an association’s authority to borrow money.
- i. A corporation not for profit may borrow money at such rates of interest as the corporation may determine, and secure its obligation by pledge of all or any of its income under the Florida Not For Profit Corporations Act, Section 617.0302(7).
 - ii. Section 718.111(7)(a) of the Act provides that the association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of

its members².

iii. Section 718.1265(1)(m) of the Act provides that “to the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located”, may, “without unit owners’ approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.”

- d. **Relevant Considerations:** The Act does not clearly address the authority of a board to levy a special assessment or borrow money for the association. It is typically addressed in the association’s declaration of condominium, articles of incorporations or bylaws. However, declarations of condominium, articles of incorporation or bylaws will often times limit an association’s authority to borrow money and/or specially assess, or require a certain percentage of the membership to approve borrowing and/or special assessments. Monetary limits on the amount an association can borrow or specially assess can impede the association’s ability to finance or charge for major critical repairs without the approval of a majority or super-majority of the unit owners. This unnecessarily and adversely affects an association’s ability to maintain, repair and replace the condominium property. The relevant Florida case law indicates that an association should not be precluded from performing maintenance, repairs and replacements, which are necessary for the health, safety and welfare of the residents. This has also been emphasized by many of the presenters who provided input to the Task Force. Otherwise, volunteer directors are caught between two competing irreconcilable requirements, limits on funding sources and the duty to maintain, repair and replace.
- e. **Task Force Recommendations:** The Task Force recommends amendments to the Act to provide that prohibitions or limitations on a board’s authority to adopt special assessments or borrow money on behalf of the association for the necessary maintenance, repair or replacement of the condominium property, including any requirements for unit owner voting or approval, are void as against public policy, and that any such provision in existing governing documents be deemed void. This recommendation is

² No association may convey or mortgage association real property except in the manner provided in the declaration and, if the declaration does not specify the procedures, 75% of the total voting interests is required.

intended to apply retroactively to existing associations.

3. Inspection Reports; Transparency:

a. **Task Force General Findings:** Requirements for tracking and reporting condominium building maintenance and condition do not exist in Florida law. Indeed, the Task Force was not presented with any requirements for specific maintenance, repair, deferred maintenance or similar protocols or requirements in the Act or the Florida Building Code, even after consultation with building officials and structural engineers. The engagement of an inspector is left to the discretion of the board of directors. The qualifications and credentials of inspectors are not regulated. The commencement of inspections and interval between such inspections are not addressed in the State law. With the exceptions of recertification requirements in Miami-Dade and Broward Counties, local governments do not receive nor provide associations with copies of inspections reports and are not required to issue recommendations to the association. If an association commissions an inspection report, it has no statutory obligation to share the findings with the local government or the unit owners. It was also found that greater access to building inspection reports by unit owners is needed.

b. **Current Law- Required Inspections and Inspection Reports:**

i. **Building Recertifications:** Only in Miami-Dade County and in Broward County, does there exist what is known as the 40-Year Recertification, pursuant to each of those two counties' respective local codes and ordinances, requiring a detailed inspection report by a licensed engineer (threshold engineer) or architect to be performed 40 years after completion of the condominium building or other residential property. Beyond Miami-Dade and Broward Counties, there is no requirement in any other county, city or local government in the State of Florida for such certification, inspections, reporting or determination of the structural soundness or integrity of a residential condominium building³.

ii. **Developer Turnover Inspection Report:** As of July 1, 2008, Section 718.301(4)(p) of the Act has required a developer to provide, at turnover of control of the association to the non-developer unit owners, an inspection report under seal of an architect or engineer, attesting to the required maintenance, useful life, and replacement costs of the following:

i. Roof,

³ In August 2021, the City of Boca Raton enacted a similar certification ordinance requiring 30-year recertifications for buildings greater than 50 feet or 3 stories in height. Other local governments are reported to be now considering requirements on an individual basis.

- ii. Structure,
- iii. Fireproofing and fire protection systems,
- iv. Elevators,
- v. Heating and cooling systems,
- vi. Plumbing,
- vii. Electrical systems,
- viii. Swimming pool or spa and equipment,
- ix. Seawalls,
- x. Pavement and parking areas,
- xi. Drainage systems,
- xii. Painting, and
- xiii. Irrigation systems.

iii. **Association Website Requirement:** An association managing a condominium with 150 or more units which does not contain timeshare units must have a website and is required to post digital copies of certain documents on its website or make such documents available through an application that can be downloaded on a mobile device. Building inspection reports are not required to be posted on these websites.

c. **Relevant Considerations:** According to presenters, cost considerations or lack of understanding observable physical conditions has caused some boards to defer, delay and perhaps ignore potentially significant building deterioration issues such as concrete spalling and deterioration, rebar and other metal element failures, structural cracking, lack of appropriate weather or waterproofing. These factors can lead to deterioration of condominium buildings and improvements, and can present potential significant life safety concerns. In 2008, the Florida Legislature adopted a requirement that every building greater than three stories in height to be inspected every five years as part of Section 718.113 of the Act. This law required that condominium buildings over 3 stories be inspected under seal of an architect or engineer attesting to required maintenance, useful life, and replacement costs of the common elements. In 2010, this law was repealed for what was stated in the Senate Staff Report as “cost-savings measures”.⁴ With the exceptions of Miami-Dade and Broward Counties recertification requirements, local governments do not require inspections of buildings, recommendations of local governments are minimal, and certain reports are not readily available to associations.

d. **Task Force Recommendations:**

i. **Developer Turnover Inspection Report:**

1. The Task Force recommends that waterproofing be added to the list of items required to be addressed in the developer

⁴ Fla. Staff An. H.B. 663, April 21, 2010.

turnover inspection report pursuant to Section 718.301(4)(p) of the Act.

2. The Task Force recommends that the developer turnover inspection report required by Section 718.301(4)(p) of the Act be required to also attest to the condition of the required items.
3. The Task Force recommends that the developer's turnover condition inspection report required by Section 718.301(4)(p) of the Act include a detailed maintenance protocol for each component of the building in the turnover inspection report and that Section 718.113 of the Act be amended to require associations to comply with the maintenance protocols provided by the developer until such time as the association obtains a new maintenance protocol from a licensed professional engineer.

ii. Association Inspection Report:

1. The Task Force recommends requiring periodic structural and life safety inspections of all condominiums and cooperatives with vertical construction of 3 stories or greater after transition of control to unit owners.
2. The Task Force recommends a standardized template for required association building inspection reports after turnover and uniform qualifications for professionals providing association inspection reports. Guidelines/requirements for such reports should include, without limitation, requirements/credentials for the preparer of the inspection report.
3. The Task Force recommends that by December 31, 2024, any residential condominium building 3 stories or greater in height, be inspected and the association obtain a report under seal of a licensed Florida architect or engineer, attesting to current and deferred maintenance standards, useful life, and replacement costs of the common elements and other condominium property that is the maintenance responsibility of the association. An updated report shall also be required every five years thereafter. A report shall not be required for an association that received the developer turnover report required by F. S. 718.301(4)(p) provided that an association must update such report every five years.

iii. Local Government Inspection Reports:

1. If building inspection reports are required or performed by a local government, the local government shall provide the association a copy of the report and the recommendations concerning the necessary repairs to the building structure.

iv. Disclosure of Inspection Reports:

1. The Task Force recommends that by December 31, 2023, associations operating 100 units or more, or having annual revenues in excess of \$500,000 be required to have a website in compliance with Section 718.111(12)(g) of the Act. The Task Force further recommends that an association be required to update the website no less frequently than quarterly, except as noted below. Final building inspection reports must be posted on the website no more than 10 days after receipt. Directing a unit owner or his/her representative to any website that contains a requested record(s) accessible to the unit owner shall be deemed to satisfy a request for access to records under Section 718.111(12)(c) of the Act. Failure to post records to a website or update a website as required shall not invalidate any action of the association.
2. The Task Force recommends requiring association inspection reports to be distributed to all unit owners which distribution may be done electronically. The Task Force recommends revisions to the Condominium Frequently Asked Questions forms to include a disclosure of the existence and date of the most recent building inspection report.
3. The Task Force also recommends that the building inspection report be added to the list of documents which must be provided for buyer review before the 3-day rescission period in unit resales commences, pursuant to Section 718.503 of the Act.

e. Other Notes from Task Force: While the Task Force made no specific recommendation considering it best addressed by experts, the Task Force acknowledges the benefit of the certification of a sub-specialty license for professional structural engineers.

4. **Association Compliance with Inspection Report Requirements and Remedies of Unit Owners:**

- a. **Task Force General Findings:** Unit owners should have defined remedies in the event an association fails to obtain a required inspection report or in the event an association fails to commence work required by an inspection report. However, to avoid premature, costly litigation, a reasonable notice and an opportunity to cure the failure should be provided to an association by a unit owner before legal action is commenced by the owner, other than in emergency situations.
- b. **Current Law:** There is no requirement for an association to obtain a building inspection report.⁵ Section 718.111(1)(c) of the Act provides that a unit owner does not have any authority to act for the association by reason of being a unit owner. Section 718.303 of the Act provides that a unit owner may bring an action at law or in equity in connection with an association's failure to comply with the Act or the association's declaration or other governing documents, and the prevailing party is entitled to recover attorneys' fees and costs from the non-prevailing party. A unit owner may also bring claims for negligence and breach of fiduciary duty.
- c. **Relevant Considerations:** The presenters repeatedly emphasized to the Task Force that associations, administered by boards of directors, are responsible for the maintenance, repair and replacement of various components of the buildings. Unit owners are not empowered to independently act for associations and, therefore, they must have reasonable and cost effective options to pursue in the event of an association's failure to perform required inspections and/or maintain, repair or replace the condominium property.
- d. **Task Force Recommendations:**
 - i. The Task Force recommends establishing a private cause of action of a unit owner if an association fails to obtain a required inspection report or perform work required by an inspection report, including, without limitation, options for a unit owner to seek the appointment of a receiver. Such private cause of action should not be subject to the arbitration or pre-suit mediation requirements of the Act.
 - ii. The Task Force recommends that absent emergency situations of imminent life safety, a unit owner be required to provide an association with notice, and then opportunity to cure, prior to proceeding with an action for failure to obtain a required inspection report. A unit owner's private cause of action for an association's

⁵ Other than in Miami-Dade and Broward Counties, and in the City of Boca Raton in connection with required recertification programs

failure to timely obtain an inspection report should not be a “dispute” subject to arbitration or pre-suit mediation under Section 718.1255 of the Act.

- iii. The Task Force recommends granting unit owners the right to request that the Division of Florida Condominiums, Timeshares and Mobile Homes issue a notice, which is admissible in court, of alleged noncompliance with the association’s duty to obtain a required inspection report or maintain the condominium property. The Division should be authorized to adopt rules to implement such for cause notice procedure.

5. **Reserve Studies; Reserve Waivers; Funding Reserves:**

- a. **Task Force General Findings:** Associations should fund reserves in adequate amounts to ensure the maintenance, repair and replacement of structural and life safety components of a building. The failure to maintain cash reserve funds on-hand is often detrimental to associations, although owners in some communities are able to afford to “pay when it’s needed”. Many associations are not in the position or are reluctant to fund necessary deferred maintenance or capital projects when the need arises because of the lack of reserve funds as a result of waiving reserves , sometimes for decades. Many necessary repairs or maintenance may be sidestepped for this reason. However, reasonable alternative methods of funding may be appropriate for some associations.
- b. **Current Law:**
- i. There is no requirement for an association to obtain a reserve study.
 - ii. Section 718.112(2)(f) of the Act requires boards to annually budget for fully funded reserves for building painting, pavement resurfacing and roof replacement, and any other item for which the deferred maintenance or replacement cost exceeds \$10,000.
 - iii. Section 718.112(2)(f) of the Act authorizes a reduction or waiver of the required reserve funding, which must be approved by a majority of the members of the association at a meeting at which a quorum of the unit owners is present.
 - iv. Section 718.112(2)(f) of the Act authorizes developers to vote to waive or reduce reserves for the association during the first two fiscal years of the association’s existence.
 - v. There is no limit to the number of years an association may waive or reduce reserve contributions. Reserves may be waived by the unit owners every year.
 - vi. There is no specific disclosure requirement in the Act for an association’s year-end annual financial statement as to reserve funding waiver or reduction decisions.
 - vii. Section 718.112(2)(f) of the Act provides that reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved by a majority of the membership present at a duly called meeting. Before turnover of control of an association by a developer to unit owners, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of the nondeveloper voting interests.
 - viii. Funding formulas for reserves required by Section 718.112(2)(f) of the Act must be based on either a separate analysis of each of

the required assets (“straight line” or “component”) or a “pooled” (or “cash flow”) analysis of two or more of the required assets under Rule 61B-22.005(3) of the Florida Administrative Code (“FAC”).

ix. Regarding pooled reserves, Rule 61B-22.005(3)(b) of the FAC provides that:

1. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall be not less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful lives of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

c. **Relevant Considerations:** Recommendations for enhanced reserve funding requirements were repeatedly made to the Task Force. The failure to maintain reserves for critical building components was viewed as a major contributor to the lack of maintenance, repairs and replacements in many condominiums. Although many presenters advised against waiving reserves on a continuous year to year basis, it is not atypical for associations to waive reserves every year and rely on special assessments or lines of credit for funding on an as needed basis. These alternative funding mechanisms may only be appropriate for certain associations.

d. **Task Force Recommendations:**

- i. **Reserve Studies:** The Task Force recommends amendments to the Act to require periodic reserve studies for residential condominiums with 3 stories or greater. As stated elsewhere in these recommendations, the content of such reserve studies should be made through a uniform prescribed template by licensed architects or engineers as described in Article 3(d)(ii)(3) of this Report regarding association inspection reports, or licensed general contractors who serve as cost estimators with at least ten years of licensure and ten years of experience in vertical construction. The Task Force recommends that the Legislature consider combining the content of the reserve report recommended in this Article 5 and the inspection report recommended in Article 3 to avoid duplication of services and unnecessary costs to

associations.

- ii. Reserve Components:** The Task Force recommends that commencing with the first association budget year and each year thereafter, the association shall be required to maintain capital replacements/deferred maintenance budget reserves for each component item stated in Section 718.301(4)(p) of the Act and waterproofing (“mandatory reserves”). Prior to the issuance of a turnover report, the developer budget projections will serve as a basis for determination of the useful life and replacement costs of each stated common element component item. The turnover inspection report required by Section 718.301(4)(p) of the Act will serve as a basis for such useful life and replacement costs. Where there is no developer turnover report, the required association inspection report would serve as a basis for replacement costs until a reserve study is done in accordance with Subsection (i) of this Section 5. The association may also collect reserves for non-mandatory components or expenses, as determined by the board of directors or as otherwise required by the governing documents, such as landscaping, redecorating, funding insurance deductibles, and replacing furniture, fixtures and equipment (“non-mandatory reserves”).
- iii. Pooled Reserves:** The Task Force recommends eliminating the option for condominiums to maintain pooled reserves for mandatory reserve components under Section 718.301(4)(p) of the Act, and waterproofing. Pooled reserves initially set aside for building structural and other essential components of the condominium building cannot be diverted to non-life safety expenditures and other discretionary uses of funds which reduce, diminish, or even eliminate necessary resources for life safety repairs and maintenance. Non-mandatory reserves may be pooled.
- iv. Reserve Disclosures:** The Task Force recommends required specific disclosures to unit owners in annual financial statements as to any waivers or reductions of required reserve funding.
- v. Reserve Funding:** As to deferred maintenance and repair and replacement of the components listed in Section 718.301(4)(p) of the Act, the Task Force recommends that by December 31, 2026, an association be required to establish a fund for each component in an amount equal to not less than 50% of the replacement costs based on the estimated remaining useful life. For those building components that have a useful life of more than 30 years, such as structural, fire protection, elevators, plumbing, electrical and

drainage systems and seawalls, the Task Force recommends an association establish a reserve fund for these components using a 40-year original useful life, with a remaining useful life based upon the most recent building inspection report. The Task Force recognizes that certain building components such as heating and cooling systems may have a useful life less than 30 years and such useful life determination should be pursuant to the most recent building inspection report. If an association does not achieve the required funding by December 31, 2026, it shall be obligated to secure an alternative funding mechanism(s), which must be disclosed to the unit owners, and to prospective purchasers in the FAQ and in the estoppel form. Non-mandatory reserves shall be funded at the levels recommend by the board of directors.

vi. Developer Waiver of Reserves: The Task Force recommends that the authority of a developer to waive statutory mandated reserves under Section 718.112(2)(f) of the Act be repealed.

vii. Association Waiver of Reserves: The Task Force recommends that the authority to annually waive or reduce mandatory reserves be amended to require the approval of no less than 75 percent of the voting interests present and voting at a meeting at which a quorum is present. The Task Force further recommends that no association may reduce mandatory reserves below 50 percent of the total statutorily required amounts. For any amounts waived, the association must establish an alternative funding mechanism(s). The waiver and alternative funding mechanism(s) must be disclosed in a conspicuous manner to unit owners, and to prospective purchasers in the FAQ and in the estoppel form.

viii. Use of Reserves: The Task Force recommends that mandatory reserves not be used for non-scheduled purposes other than casualty reconstruction, including deductibles. They may also be used for insurance premiums as long as repaid within 12 months. Both exceptions require the approval of a majority of the voting interests present and voting at a meeting at which a quorum is present.

e. Other Notes from Task Force: The Division currently has broad authority to investigate alleged reserve funding violations.

6. **Developer Warranties and Liability, Design Professional Liability:**

- a. **Task Force General Findings:** Developers and others involved in the construction and sales of new condominiums should be accountable for defects attributable to original construction and for ensuring the association is in a sound financial and operational position at the time of turnover.
- b. **Current Law:**
 - i. Developers are required to provide implied warranties of fitness and merchantability for the condominium building and certain other improvements under Section 718.203(1) of the Act.
 - ii. Contractors, subcontractors and suppliers of the developer provide similar warranties under Section 718.203(2) of the Act.
 - iii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.
 - iv. Section 95.11(3)(c), Florida Statutes, currently provides for a statute of limitations for actions founded on negligence as well as design, planning, or construction of an improvement to real property, all of which is within 4 years from certain events occurring. However, actions for design, planning or construction must commence within 10 years after the date of actual possession by the owner, the date of the issuance of the certificate of occupancy, the date of abandonment of construction, if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. This latter limitation is commonly known as a statute of repose.
- c. **Relevant Considerations:** Declarations of condominium often limit and restrict the ability of the association and the unit owners to bring claims against the developer for construction related problems. Some contracts between a developer and unit purchasers include similar limitations and restrictions. These are not in the interest of the long-term viability of the condominium project.
- d. **Task Force Recommendations:**
 - i. **Developer Disclaimers and Liability:** The Task Force recommends amendments to the Act, and other appropriate regulatory changes, to provide that developer non-statutory warranty disclaimers and other waivers of liability by unit owners for construction defects in offerings, prospectuses, declarations, contracts, or otherwise be void against public policy. The Task Force also recommends amendments to the Act to provide that prohibitions and limitations against boards of directors bringing legal action against developers, (including unit owner approval requirements), are void as against public policy.

- ii. **Limitations on Actions for Design/Construction Related Claims:**
The Task Force recommends amendments to Florida law to provide ample opportunity for condominium and cooperative associations to seek redress for defective design and construction under the applicable statute of limitations and repose in Section 95.11(3)(c), Florida Statutes.

7. **Termination of Condominiums for Economic Waste/Obsolescence:**

- a. **Task Force General Findings:** There should be practical options for unit owners to terminate their condominium where the building has become economically obsolete or the cost of necessary maintenance repairs represents a disproportionate cost in relation to the value or increase in value of the property.
- b. **Current Law:**
 - i. Section 718.117(2)(a) of the Act provides that notwithstanding any provision in the declaration, the condominium form of ownership of a property may be terminated by a plan of termination approved by the lesser of the lowest percentage of voting interests necessary to amend the declaration or as otherwise provided in the declaration for approval of termination if:
 - 1. The total estimated cost of construction or repairs necessary to construct the intended improvements or restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of the units in the condominium after completion of the construction or repairs; or
 - 2. It becomes impossible to operate or reconstruct a condominium to its prior physical configuration because of land use laws or regulations.
 - ii. Section 718.118 of the Act provides that in the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.
- c. **Relevant Considerations:** Termination thresholds that are impractical result in great economic waste, forcing unit owners to pay for repairs that will not correspondingly increase the value of the condominium, in turn forcing owners who cannot pay to sell their units below value or lose title in a foreclosure. If the association is not able to fund necessary repairs and replacement, the condominium becomes an eyesore and depresses the value of the units within it as well as neighboring property values and correspondingly depresses ad valorem tax revenues. This problem stokes outrage by owners when one or a small number of owners have an effective veto of a termination plan. At the same time, Florida has historically placed a special intrinsic value on real property ownership, especially homesteads, as well as contract rights conferred by a declaration of condominium. Further in the current real estate market it is often impossible to replicate the location and size of a unit with a termination's proceeds. Also, the threshold should not be so low as to encourage the wholesale buying of

groups of the condominium units for termination.

d. Task Force Recommendations:

- i. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for economic waste or obsolescence where the cost of construction/repairs exceeds a disproportionate percentage of the cost of the vertical improvements to the condominium, to be determined by an independent MAI appraisal. The required vote to authorize such termination shall be no greater than 80% of the total voting interests of the condominium, unless the declaration provides for a lower percentage for such termination.
- ii. The Task Force recommends that Section 718.117(2)(a) of the Act be amended to authorize termination for uneconomic capital repairs where the total estimated cost of construction or repairs necessary to construct the vertical improvements included in the condominium property or restore such improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds 15 percent of the then current fair market value of such vertical improvements.
- iii. The Task Force recommends that the required vote to authorize termination for economic waste, impossibility or uneconomical capital repairs as provided in Section 718.117(2)(a) of the Act be the lesser of the lowest percentage of voting interests necessary to amend the declaration, or the percentage of voting interest required in the declaration for approval of termination, or 80 percent of the voting interests in the condominium.

8. **DBPR Division of Florida Condominiums, Timeshares and Mobile Homes Trust Fund:**

- a. **Task Force General Findings:** It is the understanding of the Task Force that the funding of the Division's Education and Compliance Bureau is subject to the appropriations allocations of the Florida Legislature on an annual basis. Such allocations are primarily derived from the Condominium, Timeshare and Mobile Homes Trust Fund, which is funded by a statutory \$4 per residential unit annual fee required to be paid by each condominium association to the Division. Such trust fund, similar to other trust funds, are subject to the reallocation, deduction, or what is commonly referred to as "sweep" by the Legislature in its annual appropriations process to achieve a fully funded budget as constitutionally and statutorily required. Such sweeps have reduced the availability of trained staff to deliver meaningful substantive education of condominium association directors and officers, as well as unit owners, throughout the State. Given that there are over 27,000 condominium associations and what is estimated to be almost 3,500,000 Florida condominium residents, the Task Force believes that the education of directors, officers and unit owners, as to their specific obligations, statutory requirements and issues involved in association and condominium management, operation and maintenance is imperative. Condominium communities need to understand the obligations and consequences of common interest ownership as well as the duties of boards of directors and officers to diligently maintain, repair and make safe such buildings and the role of unit owners in the operation and financial support of their respective condominium associations. The Task Force believes that insufficient funding has hindered the Division's ability to adequately recruit, train and retain staff at the Division's Education and Compliance Bureau to robustly undertake such education programs. Thus, the Task Force believes such impediments to adequate staffing and funding should be removed as part of the annual legislative appropriations process.
- b. **Task Force Recommendations:**
- i. The Task Force recommends that the Florida Condominium Trust Fund shall not be subject to sweep, deduction or use for any purpose other than the operation of the DBPR Division of Condominiums, Timeshares and Mobile Homes. At least 30 percent of the Florida Condominium Trust Fund should be used annually for educational purposes intended to train and educate directors, officers, and unit owners in programs to be administered by the Division.
 - ii. The Task Force supports the implementation of a cause of action to authorize the DBPR to collect delinquent fees/charges.

9. **Unit Owner Financing:**

- a. **Task Force General Findings:** In those instances where condominium associations do not have funds or reserves for repairs or maintenance as they are needed, especially structural repairs, or capital replacement of deteriorated components of the condominium buildings and other improvements, a potentially large special assessment will be required, as elsewhere described in this Report. The magnitude of such special assessments often pose a financial burden on individual unit owners, especially those on fixed incomes or with limited financial resources. While associations may have the means to undertake short-term borrowing or other financing using lines of credit and pledging association assessment revenue streams, the need for viable programs to fund deferred maintenance and structural repairs should be addressed by federal, state and local agencies offering means tested financing alternatives to individual owners to fund special assessments.

In that regard, the Task Force believes that appropriate federal, state and local housing finance and affordable housing administration agencies should undertake an analysis and create programs based upon existing mortgage and other home finance improvement programs to provide those with limited incomes low cost and low interest long-term amortized mortgage financing opportunities to pay the referenced special assessments. An example would be the current PACE program used to allow for hurricane strengthening and energy efficiency improvements to housing to those who qualify. An expansion of the scope of such PACE program is one example of how government could innovatively provide financing for those with limited means and income to support the building infrastructure improvements for aging condominium properties.

Another example of potential funding of deferred maintenance and capital replacement of condominium building structures would be the creation and use of Municipal Benefit Taxing Units or Municipal Service Taxing Units ("MSBU's and MSTU's"). Such special taxing district units could be used to provide long-term low interest financing vehicles to fund the substantial repairs as an alternative to special assessments.

Another alternative funding source for structural repairs and deferred maintenance items of condominium buildings could be the affordable housing trust fund commonly known as the Sadowski Fund. The Task Force recommends that legislation be enacted to enable such affordable housing trust fund be used for condominium structural repair and deferred maintenance use. A portion of the Sadowski Fund can be earmarked for deferred maintenance/structural repairs for those unit owners who satisfy the income/means qualification to otherwise qualify for state affordable housing funds.

Another example, at the federal level, would be to provide FHA or VA government guaranteed long-term amortized mortgages for the specific purpose of funding deferred maintenance and structural repair special assessments based using an income/means test. Additionally, current state and local government bond programs could be expanded in scope and purpose to encompass such necessary condominium deferred maintenance and structural repairs to allow individual unit owners to obtain long-term financing. All of these programs would be secured by first or second mortgages on an individual owner's condominium units, thus creating a security interest providing probability of repayment of such government guaranteed or subsidized mortgage loans.

- b. **Task Force Recommendations:** The Task Force recommends that the Department of Housing and Urban Development ("HUD"), the Federal Housing Finance Agency ("FHFA"), and the Florida Housing Finance Corporation adopt major structural repair financing programs whereby long-term (e.g. 30-year) amortized loans are made available to qualified condominium unit owners on an income/means basis to facilitate the financing of special assessments necessary to address life safety remediation in aging condominium buildings.

10. **Community Association Managers and Consulting Professionals:**

- a. **Task Force General Findings:** Community association managers frequently coordinate and supervise maintenance, repair and replacement projects. Boards of directors and residents should be able to rely on advice of community association managers and other professionals who provide advice to the association. Community association managers should have a duty to provide specific recommendations to and advise boards and residents regarding the status of necessary maintenance, repairs and replacements. It would benefit condominium residents for community association managers to have additional continuing education requirements related to typical deferred maintenance and replacement work in condominiums.
- b. **Current Law:**
- i. Section 468.431(2), Florida Statutes, defines “community association management” to include, without limitation, negotiating monetary or performance terms of a contract subject to approval by an association, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association’s governing documents and the requirements of law as necessary to perform such practices.
 - ii. Section 718.111(1)(d) of the Act provides that as required by section 617.0830, an agent of the association shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An agent of the association shall be liable for monetary damages as provided in Section. 617.0834 if such agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in section 617.0834; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
 - iii. Section 468.4334(1), Florida Statutes, provides that a community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under chapter 468.
 - iv. Section 468.4334(1), Florida Statutes, provides that a community association manager and a community association management firm must discharge duties performed on behalf of the association as authorized by chapter 468 loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging

unreasonable or excessive fees.

v. Section 468.4334(2), Florida Statutes, provides that:

1. A contract between a community association and a community association manager or a contract between a community association and a community association management firm may provide that the community association indemnifies and holds harmless the community association manager and the community association management firm for ordinary negligence resulting from the manager or management firm's act or omission that is the result of an instruction or direction of the community association. This paragraph does not preclude any other negotiated indemnity or hold harmless provision.

a. Indemnification [under paragraph (a)] may not cover any act or omission that violates a criminal law; derives an improper personal benefit, either directly or indirectly; is grossly negligent; or is reckless, is in bad faith, is with malicious purpose, or is in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

vi. Section 468.426(2), Florida Statutes, provides that acts that constitute grounds for which disciplinary actions against managers may be taken include, without limitation:

1. Committing acts of gross misconduct or gross negligence in connection with the profession.

2. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association.

vii. Section 558.0035, Florida Statutes, provides that an individual design professional is not liable for damages from negligence occurring within the course and scope of contract between the design professional's business and a property owner where the contract provides accordingly.

c. **Relevant Considerations:** Community association management contracts and professional service contracts frequently contain waivers, limitations of liability and requirements for the community association to indemnify the management company or professional service provider, even for the negligence of the management company or professional service provider. Such waivers, limitations and indemnity requirements are not in the interests of the health, safety and welfare of condominium residents. Further, they are not equitable for community associations, which are governed by volunteer, unpaid boards of directors comprised of unit owners, rather than paid professionals.

- d. **Task Force Recommendations:**
- i. Community association managers should make specific recommendations to and advise the board regarding proper maintenance and communicating the status of maintenance to the unit owners.
 - ii. Additional educational requirements for CAMs addressing building maintenance and life safety building components should be implemented.
 - iii. Attempts by community association management companies and other consulting professionals to avoid liability for advice they provide or be indemnified for their own negligence or breach of their contractual obligations should be void as against public policy.

11. **Local Government Accountability:**

- a. **Task Force General Findings:** Local governments should have qualified professionals available to make recommendations to associations and to review and approve building inspection reports required for code compliance and permitting purposes. Local governments should have some level of responsibility to associations and unit owners for negligent inspections and improper building approvals.
- b. **Current Law:** In 1985, the Florida Supreme Court in *Trianon Park Condominium v. City of Hialeah*, 468 So.2d 912, held that a building department is not responsible for damages to a condominium association caused by negligent building inspections. The Court held that although a building department may enforce codes, it had no duty to ensure the proper construction of the building under the law of sovereign immunity.
- c. **Relevant Considerations:** The condominium form of ownership is unique and requires additional considerations in the carrying out of codes by local governments. A duty of care is recommended.
- d. **Task Force Recommendations:** Condominium residents should be entitled to rely on the inspections and inspection reports performed by or on behalf of local governments, and local governments should not be able to avoid responsibility for the content and conclusions of building inspection reports under the doctrine of sovereign immunity.

12. **Association Insurance:**

- a. **Task Force General Findings:** Associations need more clarity regarding insurance coverage requirements in order to protect the general health, safety and welfare of the residents of condominiums. The Act should be amended to require casualty insurance coverage for the full insurable replacement cost of the condominium property insured by the association. Additional protections to better assure the availability of funds for deductibles are also needed.

- b. **Current Law:** Section 718.111(11) of the Act provides that a residential condominium must be protected with adequate property insurance.
 - i. Section 718.111(11)(a) of the Act provides that adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.
 - ii. Section 718.111(11)(a)(3) of the Act provides that when determining the adequate amount of property insurance coverage, the association may consider deductibles.
 - iii. Section 718.111(11)(c) of the Act provides that policies may include deductibles as determined by the board, and the board may determine the deductible based on factors including, without limitation, the level of available funds.
 - iv. Section 718.111(11)(d) of the Act provides that an association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association.

- c. **Task Force Recommendations:**
 - i. The Task Force recommends that to the extent of reasonable market availability, associations must obtain casualty coverage in an amount equal to the full replacement cost, with code and ordinance coverage, and that ACV (Actual Cash Value) coverage should not be permitted.
 - ii. The Task Force recommends that to the extent of reasonable market availability, the deductible in condominium casualty insurance policies not exceed prevailing market norms in the locale of the condominium, and not otherwise materially decrease the full replacement cost coverage required to be obtained by the association.

- d. **Other Notes from Task Force:** Deductibles currently range on average from \$5,000-\$10,000 for property damage other than windstorm. Windstorm deductibles are typically 2-5% of the policy limits.

CONCLUSION

The Task Force has determined that the lack of uniform maintenance standards or protocols, and the unguided discretion given to boards of directors to determine when, how, and if life safety inspections should be performed, requires legislative intervention. The need for such maintenance standards and a similar need for standards for credentials, content, and continuity of inspections is compelling. Condominium associations and cooperative boards have the duty to protect the life safety of all residents of each condominium and cooperative building and must be transparent in their operations including the reporting of such inspections and maintenance standards.

Condominium associations and cooperative boards must have the financial tools to fund deferred maintenance and structural repairs which will be necessary as buildings and other improvements age. Such tools must not be hindered or impaired by the unwillingness of some owners to invest in their condominium property. Thus, statutory reserves must be enhanced in their scope and well-funded over a period of time. Additionally and alternatively, other means of financing should readily be available to condominium associations and cooperative boards to fund deferred maintenance and structural repairs.

The Task Force believes that through maintenance protocols, transparency of governance and communication, regular inspections of a meaningful content, and a funding plan, the life safety of the residents of Florida condominiums and cooperatives will be enhanced and protected.

APPENDIX A

Task Force Meeting Dates and Presentations

July 9, 2021, 12:00 p.m. - 1:30 p.m.	Task Force Meeting
July 14, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
July 22, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
July 28, 2021, 12:00 p.m. – 2:00 p.m.	Task Force Meeting
August 4, 2021, 12:00 p.m. – 2:00 p.m.	Presentation

Reserve Study/Funding Presentation

Presenters- [Dreux Isaac](#), Architect (President, Dreux Isaac & Associates, Inc.)
[Matt Kuisle](#), Professional Engineer, PRA, RS
(Regional Executive Director, Reserve Advisors)

Materials- [Outline of Issues Analyzed
PowerPoint Presentation](#)

August 11, 2021, 12:00 p.m. – 2:00 p.m. Presentation

Structural Engineering Presentation

Presenter- [Tom Grogan](#), Committee Chair of Licensure and former President, The Florida Structural Engineers Association

Materials- [PowerPoint Presentation](#)

August 11, 2021, 2:00 p.m. – 3:00 p.m. Task Force Meeting

August 18, 2021, 12:00 p.m. – 2:00 p.m. Presentation

Insurance Presentation

Presenters- [Andrea Northrop](#), Esq.
[David Thompson](#), CPCU, AAI, API, CRIS

Materials- [PowerPoint Presentation](#)

August 25, 2021, 12:00 p.m. – 2:00 p.m.

Presentation

Building Officials Presentation

Presenters- [Building Officials Association of Florida](#)
[Kathy Croteau](#), President
[Sean Flanagan](#), Treasurer (City of Coconut Creek)
[Clay Parker](#), Past President (City of Sunny Isles)

Materials- [PowerPoint](#)

August 25, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 1, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

Community Association Management Presentations; CEOMC and CAI

Presenters- [CEOMC](#) (Chief Executive Officers of Management Companies)
Josh Burkett, Anderson Consulting
[Debbie Reinhardt](#), Resource Property Management, CEO, CFO, CMCA, AMS, PCAM

Materials- [PowerPoint Presentation](#)

Presenters- [CAI Legislative Alliance, Florida](#) (Community Association Institute)
Travis Moore, Moore Relations, Inc.
[Dawn Bauman](#), Senior VP of Governmental and Public Affairs

Materials- [Dominick Scannavino](#), LCAM
[PowerPoint Presentation](#)

September 2, 2021, 5:00 p.m. – 7:30 p.m.

Task Force Meeting

September 8, 2021, 12:00 p.m. – 2:00 p.m.

Presentations

Florida Association of Realtors Presentation

Presenters- Trey Goldman, Esquire,
[Wesley Ulloa](#), Realtor
[Keith Woods](#), Realtor
[Danielle Blake](#), Realtor

Materials- [Outline of Issues](#)

Resiliency and Environmental Engineering Presentation

Presenter- [Roberto Balbis, PE](#)
[Representative Projects](#)
Materials- [Report](#)

September 8, 2021, 5:00 p.m. – 7:15 p.m. Task Force Meeting
September 15, 2021, 12:00 p.m.- 2:00 p.m. Presentation

Department of Business and Professional Regulation Presentation

Presenters- [Julie I. Brown](#), Secretary, DBPR
[CJ Aulet](#), Director, Division of Condominiums,
Timeshares and Mobile Homes

September 22, 2021, 12:00 p.m. – 2:00 p.m. Task Force Meeting
September 22, 2021, 5:00 p.m. – 7:00 p.m. Task Force Meeting
September 29, 2021, 12:00 p.m. - 2:00 p.m. Task Force Meeting
September 29, 2021, 5:00 p.m. - 7:00 p.m. Task Force Meeting

APPENDIX B

Observers

- Florida Senate, Insurance & Banking Subcommittee
- Florida Senate, Regulatory Reform Subcommittee
- Florida Senate, Committee on Community Affairs
- Florida House, Commerce Committee
- Florida Department of Business and Professional Regulation
- Division of Condominiums, Timeshares and Mobile Homes
- Florida Department of Financial Services
- Miami-Dade Office of Consumer Protection
- Florida League of Cities, Inc.
- Florida Association of Realtors
- The Florida Bar

APPENDIX C

TASK FORCE BIOGRAPHIES

Sklar, William P.
Adams, Joseph E.
Blanch, Ivette Machado
Davies, Christopher N.
Dobrev, Alexander – Technical Advisor
Dunbar, Peter M.
Gelfand, Michael J.
Hertz, Allison - Reporter
Rodriguez, Jose A.
Rolando, Margaret A. (“Peggy”)

William P. Sklar, Esq.
Carlton Fields
Tallahassee and West Palm Beach, Florida

Mr. Sklar is Of Counsel to the law firm of Carlton Fields and former Managing Partner of the West Palm Beach office of another national law firm. Mr. Sklar is Board Certified in Real Estate Law and Condominium and Planned Development Law by the Florida Bar. He received his B.B.A. (Magna Cum Laude) and J.D. from the University of Miami. He is admitted to practice in Florida and New York and the Bar of the United States Supreme Court and Eleventh Circuit Court of Appeals.

Mr. Sklar's law practice includes representation of developers and lenders in a broad range of planning, drafting and development of residential, commercial and complex mixed-use condominiums and planned developments. Additionally, Mr. Sklar serves as regulatory counsel to developers and lenders relative to compliance under numerous federal, state and local statutes, regulations and ordinances, including, for example, the Interstate Land Sales Full Disclosure Act (ILSFDA), Fair Housing Act, Florida Condominium and Homeowners Association Acts and numerous other laws and regulations affecting real estate development and transactions. Additionally, he has represented parties in a wide variety of real estate transactional and financing matters, as well as land use matters.

Mr. Sklar is an Adjunct Professor of Law at the University of Miami School of Law and a member of the faculty of the LLM graduate law program in real property, teaching courses in condominium and planned development law and a related drafting and litigation workshop since 1980. Mr. Sklar is Director of the University of Miami's Boyer Institute on Condominium and Cluster Developments.

Mr. Sklar is the co-author of a two-volume casebook, "Cases and Materials on Condominium and Cluster Housing"; and former co-editor of Professor Ralph Boyer's treatise, "Florida Real Estate Transactions"; author of "The Wrap Around Mortgage — Its Uses and Consequences"; Lawyer's Title Guaranty Fund Notes, 1979; co-author of "Commercial Condominiums: Planning and Drafting Considerations", October, 1982 Florida Bar Journal; co-author of "Garn-St. Germain Revisited", June 1984 Florida Bar Journal; Author: "1988 Survey of Florida Real Property Law", Nova Law Review, Spring, 1989; author of "Interstate Land Sales", Chapter 29 of The American Law of Real Property, 1993; author of "Concept of Condominium Ownership", Chapter 1 of Florida Condominium and Homeowner Association Law and Practice, 1996; co-author of "The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption", February, 1999, Florida-Bar Journal; co-author of "New Condominium Exemption to the Interstate Land Sales Full Disclosure Act", March 2015, Florida Bar Journal; and co-author of "Florida Community Associations vs. AIRBNB and VRBO in Florida", Florida 2017, Florida Bar Journal.

Mr. Sklar is a Supreme Court of Florida Certified Circuit and County Court Mediator. He is a member of both the Florida Bar and American Bar Association Real Property, Probate and Trust (RPPTL) Section's Committee on Condominium and Cooperative Housing; immediate past Chairman of the Condominium and Planned Development Committee of the RPPTL Section of the Florida Bar; former member of the Florida Bar Condominium and Planned Development Law Certification Committee; Former Chairman of the American Bar Association General Practice Section's Sub-Committee on Condominium and Cooperative Housing; Fellow and

member of the Board of Governors and Executive Committee of the American College of Real Estate Lawyers (ACREL), and College of Community Association Lawyers. Mr. Sklar is a member of the Executive Council of the Florida Bar Real Property, Probate and Trust Law Section and served as Co-Editor of the Section's monthly column in the Florida Bar Journal from 2000 to 2012. Mr. Sklar is a frequent lecturer to the Florida Bar Real Property, Probate and Trust Law Section, speaking at its Condominium and Planned Development Law Seminar; Legislative Update; and Real Estate Certification Review Course, as well as being a regular faculty member at the University of Miami Institute. Mr. Sklar is the recipient of the 2017 John Arthur Jones Service Award from the Florida Bar RPPTL Section. Mr. Sklar currently serves as the Chair of the Florida Bar RPPTL Section's Condominium Law and Policy Life Safety Advisory Task Force.

In 2003-2004, Mr. Sklar served as Co-Chair of Governor Bush's Homeowners Association Task Force, responsible for legislative reform of Florida's Homeowners Association Statute (Chapter 720). Mr. Sklar is a recipient of the 2002 Lynford Lardner Community Service Award, recognizing continuing leadership in community service throughout South Florida, serves as President of Genetic Information to Stop Breast and Ovarian Cancer, Inc. a non-profit organization dedicated to educating the public on the benefits of genetic testing, and is a former member of the Board of Directors of Richard Kann Melanoma Foundation dedicated to education and prevention of melanoma and other skin cancers. Mr. Sklar is the recipient of the University of Miami School of Law's 2012 Alumni Achievement Award.

Joseph E. Adams, Esq.

Becker Lawyers

Ft. Myers and Naples, Florida

Mr. Adams has concentrated his legal practice in the area of Condominium and Planned Development Law for nearly 35 years. During his career, Mr. Adams has provided legal counsel to over one thousand community associations, primarily in Southwest Florida, where he serves as the Managing Shareholder of Becker's Naples and Fort Myers offices. Mr. Adams is a Florida Bar Board Certified Specialist in Condominium and Planned Development Law.

RECOGNITIONS

- Martindale-Hubbel, A.V. Rated
- Florida Trend, Legal Elite Hall of Fame
- Fellow, College of Community Association Lawyers

PROFESSIONAL ACTIVITIES

- Co-Chair; Condominium and Planned Unit Development Committee of the Real Property, Probate and Trust Law Section of the Florida Bar
- Former Chair; Florida Bar Condominium and Planned Development Certification Committee
- Former Chair; Florida Advisory Council on Condominiums
- Former Chair; Community Associations Institute, Florida Legislative Alliance
- Former Member; Governor's Task Force on Homeowners' Association Legislation

Mr. Adams is a frequent writer, speaker, and legislative contributor regarding Florida condominium and planned development law. In addition to 3 published law review articles, Mr. Adams has published numerous articles, including "Defending My-Our Castle (A Look at Gun Regulation by Community Associations)," The Florida Bar Journal (December 2016). His writings have been cited in Florida's appellate courts and in the Florida Statutes Annotated as legal authority. He has also been the author of a weekly newspaper column/blog involving community association law since 1996.

**Ivette Machado Blanch, Esq.
Siegfried Rivera
Miami, Florida**

Ivette Machado Blanch is a shareholder of Siegfried Rivera who specializes in Condominium Law and Community Association Law.

While at the University of Miami School of Law, she served as an Articles and Comments Editor for the University of Miami Business Law Review. Additionally, she participated in the University of Miami Academic Achievement Program, where she served as a Dean's Fellow for Constitutional Criminal Procedure. Ms. Blanch is a member of the Order of Coif. She is admitted to the Florida Bar and is currently a member of the Cuban American Bar Association. In addition, Ms. Blanch co-authored a chapter in the Third Edition of the Florida Condominium and Community Association Law Manual published by The Florida Bar, entitled "The Role of the Association In Condominium Operations."

**Christopher N. Davies, Esq.
Dentons Cohen & Grigsby, PC
Naples, Florida**

Mr. Davies has focused his practice on providing advice to condominium, cooperative and homeowner associations in Southwest Florida for the past three decades. Chris is a Director at Dentons Cohen & Grigsby, PC, and is Chair of the Firm's Florida Real Estate Practice Group. He is the past Chair of The Florida Bar's Board Certification Committee in Condominium and Planned Development Law. He served as former Vice Chair of The Florida Bar Condominium and Planned Development Law Committee for several years.

Chris was appointed to the Florida Condominium Study Commission by Governor Bob Martinez in 1990, and worked on the extensive revisions to the condominium laws at that time. He has been a member of the faculty of the University of Miami Law Center Institute on Condominium and Cluster Developments on numerous occasions.

Alexander Dobrev, Esq.

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

Orlando, Florida

Alex Dobrev is a Shareholder and chairs the firm's Multifamily & Condominium Group. He also serves as the Vice-Chair of the Condominium & Planned Development Committee of the Florida Bar, as well as its legislative Chair.

Since the recession, Alex has focused a substantial portion of his practice on distressed properties acquisitions, operations and dispositions. In the context of "broken" or "fractured" condominium projects in particular, he often works with lenders, bulk investors, and receivers, in order to evaluate and implement exit strategies, including possible unwinding of the condominium regime, while identifying and minimizing potential successor developer liabilities and related risks.

In addition, Alex counsels clients regarding Interstate Land Sales Full Disclosure Act (ILSA) compliance matters, including full and partial exemptions from the Act and overall offering structure.

RECOGNITION

- Listed in *Best Lawyers in America* 2014-2020
- 2018 Rising Star Award by the Real Property, Probate and Trust Law Section of The Florida Bar
- Recognized as "Florida's Legal Elite," 2017 by Florida Trend Magazine
- Recognized as a Florida Legal Elite "Up & Comer," 2011-2012 by *Florida Trend Magazine*
- Recognized as "Florida Super Lawyers" 2018 by Super Lawyers Magazine
- Recognized as "Florida Rising Stars" 2011 by Super Lawyers Magazine
- *Orlando Business Journal's* 10 Businessmen to Watch 2010
- Highlighted in the *Legal 500*, 2010

PROFESSIONAL CERTIFICATIONS & MEMBERSHIPS

- Vice Chair and Legislative Chair, Condominium & Planned Development Committee of Real Property, Probate and Trust Law Section of the Florida Bar
- Executive Council Member, Real Property, Probate and Trust Law Section of the Florida Bar
- Board of Directors, NAIOP, the Commercial Real Estate Development Association, Central Florida Chapter 2004-2010
- Orange County Bar Association
- The Florida Bar
- American Bar Association
- Meritas Leadership Institute 2011

Admitted

- The Florida Bar, 2001

Education

- Georgetown University Law Center (2001)
- Duke University (*magna cum laude*, 1998)

**Peter M. Dunbar, Esq.
Dean Mead & Dunbar
Tallahassee, Florida**

Peter M. Dunbar is managing shareholder of Dean, Mead & Dunbar's Tallahassee office. Mr. Dunbar's practice focuses on governmental, administrative, and real property law. He began his long career in Florida government in 1967 as staff director in the Florida House of Representatives. Mr. Dunbar later served for five terms as a distinguished member of the Florida House representing Pinellas and Pasco counties in the Florida Legislature. Upon leaving the Legislature, he held the posts of General Counsel and Director of Legislative Affairs under Governor Bob Martinez and as General Counsel at the Department of Financial Services. Mr. Dunbar served as Chief of Staff during the transition from the Martinez administration to the administration of Governor Lawton Chiles, and he is former Chairman and two-term member of the Florida Ethics Commission. Currently, Mr. Dunbar serves on the inaugural committee for the Condominium and Planned Development Law Certification for The Florida Bar.

Mr. Dunbar was admitted to the Florida Bar in 1972. He is a member of the American College of Real Estate Lawyers, an adjunct professor at Florida State University College of Law, and has recently been selected by his peers as a member of Florida Trend's Florida Legal Elite Hall of Fame.

Michael J. Gelfand, Esq. Gelfand & Arpe West Palm Beach, Florida

Michael J. Gelfand, is dual Florida Bar Board Certified, in Real Estate Law and in Condominium and Planned Development Law. He is also a Certified Circuit and County Civil Court Mediator, Homeowners Association Mediator, Arbitrator, and Parliamentarian.

Michael Gelfand, is the senior partner of Gelfand & Arpe, P.A. Located in West Palm Beach, his firm emphasizes a community association law practice, counseling associations and owners how to set legitimate goals and how to effectively achieve those goals.

Mr. Gelfand is a Past Chair of The Florida Bar's Real Property, Probate and Trust Law Section, the Bar's largest section with over 10,000 members. He served as the Section's Real Property Division Director and chaired the Legislative Review Committee and Condominium and Planned Development Committee. He also chaired the Palm Beach County Bar's Community Association Law Continuing Legal Education Committee.

He served many terms as Special Master for the City of Boca Raton after chairing the City's Builders Board of Adjustment and Appeals, receiving a City Proclamation for "interpretation and application, and his overall professionalism and dedication to the City." He received a gubernatorial appointment to the Fifteenth Circuit Judicial Nominating Commission. Mr. Gelfand co-owned ARC Mediation, Palm Beach County's largest mediation and arbitration firm, for over a decade.

Michael Gelfand is a sought-after community association law commentator, including presentations for the American Bar Association, American Legal Institute, American College of Real Estate Lawyers, The Florida Bar, the University of Miami and the Chautauqua Institute, among others.

His acclaimed writings include "The Plaza East Trilogy: Not a Nursery Rhyme, but Scary Warfare", *The Florida Bar Journal*, analyzing the collision between hurricanes and Florida's condominium property insurance legislation. The Florida Bar has published his works including "Alternate Dispute Resolution, Arbitration and Mediation" and "Condominium and Homeowner Association Liens" and many statutory updates.

Mr. Gelfand's national recognition includes induction into the College of Community Association Lawyers, and as a Fellow of the renowned American College of Real Estate Lawyers, including serving as Chair of ACREL's Common Interest Ownership Committee.

Michael Gelfand believes in personal community involvement, encouraging all to become involved in their communities. A recipient of the Palm Beach County *Pro Bono* Child Advocate of the Year Award, his public school volunteer efforts include serving as the real estate/construction appointee on the Palm Beach County School District's Construction Oversight and Review Committee, and as a magistrate for the District's Law Magnet Program. He also chaired the Youth Orchestra of Palm Beach County, Florida.

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**Allison Hertz, Esquire
Kaye, Bender, Rembaum
Palm Beach Gardens, Florida**

Allison L. Hertz is a shareholder at Kaye, Bender Rembaum, and is Board Certified in Condominium and Planned Development Law. Ms. Hertz has exclusively represented community associations and unit owners since being admitted to the Florida Bar in 2007 and is a Palm Beach County native. She graduated from Rollins College in 2004, and Nova Southeastern University Shepard Broad Law Center in 2007. Ms. Hertz enjoys public speaking, including providing Board Certification Courses to volunteer board members, and providing continuing education courses to property managers. Ms. Hertz is an active member of the Florida Bar's Condominium & Planned Development Committee, and she is currently the Co-Vice Chair for the Committee. She is also the Vice Chair of the Condominium & Planned Development Law Certification Review Committee. She was recently the Chair of the Condominium & Planned Development Committee's Hurricane Protection Subcommittee and a member of the Committee's Emergency Powers Task Force. She also serves on the Committee's Legislative and Nonresidential/Mixed Use Condominium Subcommittees. Ms. Hertz prides herself on providing a practical, real-world approach to solving her clients' legal issues.

Jose A. Rodriguez
Rennert Vogel Mandler & Rodriguez
Miami, Florida

Jose A. Rodriguez has a diverse practice focusing primarily on real estate and corporate law. He has extensive experience dealing with the needs of Latin American and international clients and represents several prominent South Florida real estate developers and high net worth entrepreneurs. He has dedicated himself to structuring complex business and real estate ventures, corporate matters, work-outs of distressed real property and coordinating the closings of real estate related financing. Mr. Rodriguez takes a practical, goal-oriented approach to complex business and real estate ventures, which has assisted his clients in accomplishing their unique objectives.

Mr. Rodriguez received his B.S. from Florida State University and J.D. with Honors from Nova Southeastern University.

Margaret A. Rolando Shutts & Bowen, LLP Miami, Florida

Margaret A. (“Peggy”) Rolando has been a partner in Shutts & Bowen’s real estate department since 1984. She is Board Certified in Real Estate and Condominium and Planned Development Law and is “AV” rated. Ms. Rolando was a Co-Chair of the Board of Governors of the American College of Real Estate Lawyers (ACREL) and past chair (2013-14) of the Real Property, Probate and Trust Law Section of The Florida Bar. She was also a member of The Florida Bar Committee on Condominiums and Planned Developments. She is a member of the Condominium and Planned Development Law Certification Committee and served as Chair during its inaugural term, 2016-2018.

Ms. Rolando has extensive experience in the acquisition, development, sale, financing and operation of large scale real estate projects. She regularly counsels clients on the creation and operation of condominiums, planned developments, mixed use projects, resorts, clubs and hotels, including regulatory matters, development, structuring, restructuring, documentation, termination and management. She has particular expertise in termination of condominiums having chaired or participated in the subcommittees responsible for drafting proposed statutory revisions to the termination provisions in the Florida Condominium Act and represents clients in pursuing efficient and effective termination strategies.

Ms. Rolando was a co-presenter on “Structuring and Operating Phase and Series (Multi-Condominium) Condominium Developments” at the Institute on Condominiums and Cluster Developments, sponsored by University of Miami School of Law in 2018. She has also spoken at the Institute on condominium terminations in 2015 on “Condominium Reversions - The Unspoken Condominium Termination Opportunity - Issues, Policies and Solutions - Recent Statutory Developments,” in 2014 on “Condominium Termination: Challenges, Issues and Unique Fact Patterns,” in 2008 on “Termination: Effects of New Legislation on Condo Regimes – Natural vs. Developer-Made Disasters and Fixes,” and in 2005 on “Termination Issues & Proposed Solutions – Facilitating Reconstruction and Redevelopment.”

Peggy has lectured on “Condominium Construction Loans” at the seminar *The Ins and Outs of Community Association Law 2017* sponsored by The Florida Bar, Real Property, Probate and Trust Law Section and the Condominium and Planned Development Committee. She is a respected speaker at the national level on development, workouts and structuring of condominiums and planned developments. She served on the faculty of the advanced seminar “Drafting Documents for Condominiums, Planned Communities and New Urbanism Developments” sponsored by the American Law Institute-American Bar Association (ALI-ABA) in 2005-2009. She planned and presented an ALI-ABA seminar in 2012 on “Bulk Sales and Purchases of Distressed Condominium Units.” She also participated in two ALI-ABA seminars in 2009, one on “Condos & Planned Communities: Bulk Sale of Units, Homes and Lots in Today’s Shifting Economy” and another on “ILSA [Interstate Land Sales Full Disclosure Act]: The Sword and Shield of Residential Real Estate Contracts.” She spoke on “The Condo Glut - A Survival Guide for Condominium Workouts” at the Fall 2007 meeting of ACREL. Ms. Rolando lectured at several seminars on workouts of distressed

condominium projects, including webinars in 2007 and 2008 sponsored by ALI-ABA.

Her publications include articles in *The Practical Real Estate Lawyer* on "Making and Encouraging Pre-Sale Disclosures" (July, 2007) and on "Governing Documents for Mixed Use Developments" (January, 2006). She also co-authored "Planning and Structuring Real Estate Developments Using Condominium and Owners' Associations," Chapter 3 (formerly Chapter 2) of *Florida Condominium and Community Association Law* published by The Florida Bar (2007, revised 2011, 2015 and 2018).

Ms. Rolando graduated *magna cum laude* from Spring Hill College and received her M.A. and J.D. with honors from Florida State University.

APPENDIX D

Presentations and Biographies