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UNINTENDED CONSEQUENCES OF NEW FLORIDA CONDOMINIUM LAW

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In response to the collapse of the Champlain Towers South Condominium, the Florida legislature passed legislation, including SB 4D and SB 154, requiring various inspections and structural integrity reserve studies for condominiums. In addition, the legislation, now in effect, removed the ability of condominium associations to vote to waive or reduce the funding of reserves or use reserves for other purposes, and requires that condominium association budgets adopted on or after December 31, 2024 fund reserves for those items specified in the structural integrity reserve study.

The changes in the law and the new requirements will affect the pocketbooks of condominium owners, making condominium ownership more expensive. Condominium owners will be responsible for the costs and expenses relating to the structural integrity reserve study which requires a licensed engineer to perform inspections of condominium buildings which are three or more stories and over thirty years old. In addition, requirements relating to life safety systems, must be completed by January 1, 2027, also increasing the operating costs of condominium associations which will be passed on to owners through increased assessments.

As mentioned, condominium associations will no longer be able to waive or reduce funding for reserves. Instead, reserves for the repair and replacement of various components of the condominium including the roof, structure, plumbing, electrical systems, waterproofing, load-bearing walls, floors, foundations, fireproofing systems, and other items that have a deferred maintenance expense or replacement cost that exceeds $10,000, must be fully funded. This too, which in effect requires condominium associations to adopt a capital improvement and maintenance plan, will increase condominium ownership in the form of higher assessments to cover the reserves required for the various components of the condominium building. Many condominium associations have taken advantage of waiving or reducing the funding of reserves to keep fees as low as possible. As a result, there is a good chance that these condominiums' funds will fall far short of the needed reserves under the new laws.

The most immediate and tangible effect of the new laws is the significant financial impact and burdens on condominium owners. Increased assessments will be required to comply with the inspection and structural integrity reserve study requirements. An additional assessment will be required to perform any upgrades, restoration and repairs required as a result of such inspections and studies. In addition to the increased costs of condominium ownership because of the new laws' requirements, increased insurance costs are being felt by condominium unit owners, both for their individual insurance policies as well as the condominium insurance policies. If condominium associations do not comply with the requirements of the new laws, the condominium will become uninsurable which will affect sales of units in the condominium as well as the values of the condominium units.

If a condominium unit owner cannot afford the increased assessments, their only option may be to sell their unit. The increased assessments, however, may lead to resale challenges as potential buyers will be more discerning given the long-term financial implications of the new laws. As a result, property values may

decrease leading to lower prices for condominium units to attract buyers.

On a positive note, an unintended consequence of the new requirements for condominiums could be a new condominium boom. Florida's first generation of condominiums which are 50-60 years old are ripe for termination. These condominiums are in prime locations and the new requirements have made these properties targets for developers. In order to comply with the new laws, many condominium associations are significantly raising assessments. In addition, the newly required inspections can lead to high special assessments which many condominium unit owners may not be able to afford. This may lead to the termination of older condominiums resulting in developer's taking advantage of the financial distress of older condominiums and developing new condominiums.

Although the intention of the new laws was to bolster the financial stability, structural integrity, and longevity of condominiums and to increase the safety of condominiums, all condominiums will be facing the challenges created by the new laws and condominium owners will be faced with increased financial burdens over the short term.

Berger Singerman's Real Estate Team remains dedicated to keeping you informed about significant legislative developments that may impact your future developments and business operations. Should you have any questions or require further guidance on how these changes may affect your projects, please contact Jeffrey R. Margolis.

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