

## **Structural Integrity/Reserve Study/Funding Legislation What Do You Do Now?**

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On January 8 the Governor of New Jersey, Phil Murphy signed into law S2760/A4384 which puts in place requirements for both structural integrity inspections and reserve studies and funding for community associations throughout the state.

This legislation is based on the *Condominium Safety Public Policy Report, Reserve Studies and Funding, Maintenance and Structural Integrity*<sup>1</sup> prepared by CAI as well as the recently updated *CAI Reserve Study Standards*<sup>2</sup> and the recently released *CAI Best Practices Report on Maintenance*<sup>3</sup>.

As someone who has been actively involved with with the development of the public policy, the reserve study standards, the maintenance report, as well as the legislation in New Jersey the purpose of this article is to give an overview of the requirements now in place in New Jersey.

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<sup>1</sup> Condominium Safety Public Policy Report, Reserve Studies and Funding, Maintenance and Structural Integrity published by CAI in October 2021, (<https://www.caionline.org/Advocacy/PublicPolicies/Pages/Building-Inspection.aspx>).

<sup>2</sup> Reserve Study Standards of the Community Associations Institute, May 2023, (<https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx>)

<sup>3</sup> Best Practices Report, Community Association Maintenance, May 2023 (<https://cai.caionline.org/eWeb/DynamicPage.aspx?site=CAI&WebCode=storeItemDetail&parentKey=52ad38d8-63f0-4b66-ad7c-8bf00ce2ef9f&catKey=017b3c55-8dd3-45f9-beba-1c92d456eaf5>)

In addition to myself the others who have contributed to this article and who also spearheaded this legislation are Ed San George, MPA, PCAM and J. David Ramsey, Esq.

The first question that always comes up is what your community is required to do.

It is very important to recognize that while all communities are required to meet the Reserve Study portion of the legislation, only a much smaller portion of communities are required to meet the Structural Integrity requirements of the legislation. This is described below.

**From the perspective of the reserve study and funding requirements, the requirements are for all associations with only 1 slight exception which is a community with less than \$25,000 in total common area assets.”<sup>4</sup>**

As far as the timing for having a study prepared or updated, if your community does not have a study or your current study is more than 5 years old you are required to have a study prepared within 1 year, or by January 8, 2025. If your study is less than 5 years old, it is required to be updated to reflect the new requirements by the time it is 5 years old. In the future, all studies must be updated at a maximum of every 5 years.

The studies are required to be prepared in conformance with the National Reserve Study Standards of CAI, latest edition by a CAI Reserve Specialist (RS™) or a licensed engineer or architect.

Some critical requirements which are in excess of the National Reserve Study Standards are listed below.

1. In all cases the study “shall determine or assess the adequacy of the association’s capital reserve funds. “Adequacy” is defined as having reserve funds, which over a 30-year projection period, will not require the need for a special assessment or loan obligation.<sup>5</sup>
  - a. If a community reserve funding is not adequate and, the increase in the associations budget line item for reserve funding to render it adequate would require an increase of more than 10 percent of the previous years common expense assessment, the deficiency shall be made adequate within 10 fiscal years. If a replacement takes place

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<sup>4</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 6(8)d

<sup>5</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 7

prior to this 10-year period which results in the fund not being adequate, the shortfall must be made up prior to the inadequacy taking place.<sup>6</sup>

- b. If the increase to establish adequate funding is less than 10% of the previous years common expense assessment, the deficiency shall be made adequate within 2 fiscal years.<sup>7</sup>
  - c. It should be noted that the legislation does not prohibit special assessments or borrowing<sup>8</sup> if a component requires replacement earlier than predicted in the study.
2. In all cases, the reserve study shall include anticipated costs associated with building maintenance<sup>9</sup>.
  3. When funding a capital replacement from the fund, the amount used cannot exceed the amount budgeted for that component in the study unless it does not result in a condition of inadequacy within the next 5 years or that the amount used will be repaid within 5 years.

It should be kept in mind that the above descriptions are an overview of which associations are required to have a Reserve Study as well as what is required to be included. It should be recognized that the new legislation requirements are more than what the current version of Reserve Study Standards require.

**From the perspective of the Structural Integrity Inspection requirements, these requirements only pertain to buildings in which the Primary Load Bearing System (PLBS) is comprised of concrete, masonry, structural steel, a hybrid structure ( more than one material) heavy timber or incorporate a podium deck.<sup>10</sup>**

So, the question becomes, what is the PLBS? While the definition within the legislation is extensive and technical in nature <sup>11</sup> it means a structural system where if one part of the structure deteriorates, a portion of the building or the entire building can collapse. This PLBS is comprised of columns, beams and bracing as well as the podium deck and balconies. The below diagram and photo are representative of a PLBS.

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<sup>6</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 7(b) (2) c

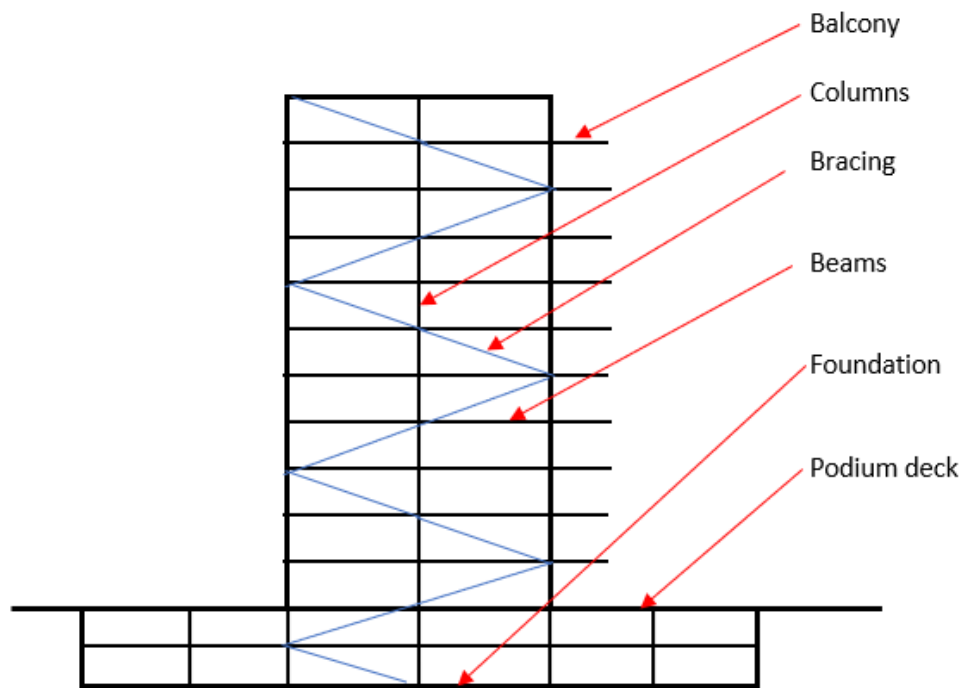
<sup>7</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 7(b) (2) d

<sup>8</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 7

<sup>9</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 6 (4)

<sup>10</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 2

<sup>11</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 2



The other common question is what type of building is excluded. This would be a structure, known as frame-built<sup>12</sup> construction where the structure is very repetitive in nature and if one structural element fails, there is not a possibility for

<sup>12</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 2, Excluded Structure

a partial or total collapse. The below photo is representative of this type of excluded structure.



In some cases, there may be a building in which only a portion of it will require inspection. An example of this is shown in the photograph below where the bottom concrete portion of the building incorporates a PLBS as well as a podium deck, but the upper portion is frame-built. In this scenario the bottom will require inspection, but the top will not.

Frame Built  
Above red  
line,  
Inspection not  
Required

Podium deck  
and PLBS  
Below,  
Inspection  
Required



As far as the timing for having a Structural Integrity Inspection performed, if your building has a PLBS as described above and is more than 15 years old (as measured from the date of the issuance of the original certificate of occupancy) you are required to have the first inspection performed within 2 years, or by January 8, 2026. Future inspections must take place at a maximum of every 5 years or when the prior report recommends, whichever is sooner.

If your building has a PLBS as described above and is less than 15 years old, you are required to have the first inspection performed within 1 year of the building reaching 15 years of age as measured from the date of the issuance of the certificate of occupancy. Future inspections must also take place at a maximum of every 5 years or when the prior report recommends, whichever is sooner.

In all cases, if any observable damage is identified to PLBS an inspection must take place within 60 days. <sup>13</sup>

The inspections are required to be prepared by an engineer licensed in the State of New Jersey. Payment for all inspections are by the association with the cost and timing included within the reserve study.

The inspections and reports are to be prepared in accordance with protocol established by the American Society for Civil Engineers<sup>14</sup> or a similar protocol by another nationally recognized structural engineering organization.

Should a safety issue be identified, the legislation requires that loans or special assessments can be levied to perform corrective work without a vote of the membership if required by the communities governing documents. <sup>15</sup>

The intent of this article is to give an overview of the recently enacted legislation. In all cases for both the preparation of a Reserve Study or a Structural Integrity Inspection, qualified professionals with a full understanding of both the national standards and local legislation should be consulted.

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<sup>13</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 3

<sup>14</sup> American Society of Civil Engineers, ASCE Standard SEI/ASCE 11-99 Guideline for Structural Condition Assessment of Existing Buildings

<sup>15</sup> Structural Integrity, Reserve Study Legislation S2760/A4384, Section 8

