

# Lunch with LAC

Legislative update  
Thursday, February 29, 2024

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# Corporate Transparency Act

Gregory Vinogradsky, Esq., EBP

# Corporate Transparency Act H.R. 6395-1217

- Federal law passed as part of the National Defense Authorization Act for Fiscal year 2021
- It is intended to curb money laundering, terrorist financing, and things of that nature
- CAI is working on an exemption for associations and/or have the implementation delayed
- If the law proceeds, the personal information of board members, corporate officers and anyone with an ownership interest greater than 25% will need to register their personal information with the government.

# Is your Community Association Subject to CTA?

- **Yes**, unless exempt:
  - Who is exempt?
    - Employ more than 20 employees;
    - Filed a federal income tax return demonstrating more than \$5 million in gross receipts or sales; **AND**
    - Operating Presence at a Physical Office within US
  - 501(c) of the IRC and exempt from tax under 501(A)
  - Political organization as defined in Section 527(e)(1) that is exempt from tax under 527(a) of IRC
- An Association formed as a Nonprofit Corporation does **not** mean it is a tax exempt 501(c).

# Who is a Beneficial Owner?

- Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise  
1) exercises **substantial control** over the entity; or, 2) owns or **controls 25% or more of the ownership interests** of the entity.
  - Excluded: minors, proxies or power of attorney agents, employees whose sole control over the entity comes from employment, someone who only has an interest in the entity through inheritance; or creditors of the company.

# What Information Must You Report

- Each beneficial owner must report:
  - Full legal name;
  - DOB;
  - Current residential or business street address; and
  - Passport/Drivers License/State ID or other document with unique ID Number

# When Must You Comply?

- Associations formed before January 1, 2024 have until January 1, 2025.
- Associations formed after January 1, 2024 must file within 90 days of formation.
- Once you register, must report any change within 30 days.
- Noncompliance may result in \$500 fine each day that the violation continues, imprisonment, or both.



# Questions?

# **The New Jersey Service Worker Retention Law and Temporary Worker Bill of Rights**

Andrew J. Podolski, Esq.

# Service Worker Retention Law

Introduced in early 2022 by Senator Troy Singleton as Senate Bill 2389. The companion Assembly Bill was A4682.

Signed into law by Governor Murphy on July 24, 2023. Took effect 90 days later on **October 22, 2023**.

“Service employees should not have the rug pulled out from under them for circumstances outside their control that have nothing to do with their job performance. These protections will offer many hardworking employees the professional courtesy and stability they deserve during transition periods.”



# The SWRL Players

**Awarding Authority** A building owner or entity that awards a service contract to vendors (ex. Large condominium association or business)  
commercial

**Contractor** Any service vendor with 4 or more employees (throughout company) that enters into a service contract with an Authority (ex. Janitorial company)  
Awarding

**Service Employee** The worker who is employed more than 16 hours per week the Contractor  
by

**Successor Employer** The vendor that replaces the Contractor upon a service contract (or an owner that directly hires Service Employees after terminating Contractor)  
termination of hires Service

# SWRL Applies Only to Covered Locations

Can be either a public or private location, including:

**Multi-family residential building with 50+ units**

Commercial center, complex or office building with 100,000+ sq.

ft.

Primary, secondary and tertiary educational institutions

Cultural centers, museums, convention centers, arenas and performance halls

Industrial sites and pharmaceutical labs

Airports and train stations

Hospitals, nursing care facilities, senior care centers or other care provider locations

health

State courts

Warehouse or distribution centers



# Service Employee

Any individual working for a Contractor who is:

- Full or part time (at least 16 hours per week); and
- Has worked on-site at covered location for at least 60 days; and

Works in connection with the care or maintenance of a building or Covered Location, including:

- Security guard
- Janitor
- Building Superintendent
- Food Service Worker
- Front Desk Worker
- Maintenance Employee
- Grounds Worker
- Elevator Operator

# Exclusions

SWRL does not apply to workers who:

Have professional or managerial roles, **including property managers**; or who

Perform work projects at Covered Location requiring a permit, such as:

- Structural
- Engineering
- Electric
- HVAC
- Plumbing







# Successor Employer

An employer who:

**Is awarded a service contract** to provide, in whole or in part, services that are substantially similar to those provided at any time during the previous 90 days; or

Terminates a service contract and **hires Service Employees as its direct employees** to perform substantially similar services within 90 days after a service contract is terminated or canceled



# Awarding Authority Requirements under SWRL

**No less than 15 days** before terminating a service contract at a Covered Location and hiring a new vendor or shifting the work in-house, the Awarding Authority must:

1. Request the terminated vendor to provide a list of all Service Employees, including name, date of hire, job classification and name and contact information of the workers' collective bargaining representative (if any);
2. Provide this information to the Successor Employer;
3. Provide written notice to any collective bargaining representative of the affected workers of the decision to terminate the service contract, enter into a new service contract or shift to direct hire
4. Provide written notice to all affected Service Employees of the pending termination of the service contract and entrance into a new service contract (or shift to direct hire) and the employees' rights under the SWRL. Notice must be posted conspicuously at Covered Location.
5. Provide the Service Workers and their collective bargaining representatives (if any) with the name and address of the Successor Employer

# Successor Employer Requirements: The Offer

Successor Employer shall provide offers to retain an affected Service Employee at a Covered Location for 60 days or until its service contract is terminated, whichever is earlier, subject to certain requirements:

## **Offer requirements:**

Must be in writing, and in substantially similar form to the sample included in the SWRL;

name of Must state the name, address and phone number of the Successor Employer, and the individual who is authorized to make the offer;

Must give Service Employee at least 10 days to accept or reject;

Must provide copy of offer to collective bargaining representative; and

of Must be in a language in which at least 10% of the employees are fluent (the Department  
languages spoken Labor and Workforce has sample offer forms available in five most common  
in NJ).

# Successor Employer Requirements: The Job

If Service Employee accepts, Successor Employer shall retain workers for at least 60 days.

Importantly, the SWRL does not specify whether Successor Employer must match terminated contractor's pay.

Successor Employer may not terminate Service Employee unless there is "just cause" (which is not defined in the statute).

Restive Covenants and Non-Compete Agreements are deemed void and cannot prevent Service Employee from accepting offer

# Successor Employer Requirements: **The Exceptions**

Successor Employer may retain less than all affected Service Employees only if the Successor Employer:

1. Finds that fewer workers are required to perform the work than the predecessor vendor had employed;
2. Retains Service Employees by seniority within each job classification;
3. Maintains a preferential hiring list of those employees not retained; and
4. Hires any additional Service Employees from the list, in order of seniority, until all affected Service Employees have been offered employment.

# Successor Employer Requirements: **Exceptions**

Successor Employer may also circumvent the hiring requirement only if it agrees to assume, and be bound by, the Awarding Authority's collective bargaining agreement (if any), provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees.

# Penalties for Violations of SWRL


- Service Employees can bring action in court against Successor Employer and/or Awarding Authority for any violation under SWRL;
  - Claimants may be awarded direct and consequential damages, attorneys fees and costs. Court may also order injunctive relief requiring Successor Employer to hire Service Employees.
- Court may impose fines as follows:
  - Up to \$2,500 for first violation;
  - Up to \$5,000 for subsequent violations.
  - “Each week, in any day of which a violation occurs, shall constitute a separate offense.”

# Union Lobbyist Arguments in Favor of SWRL

NJ is at the forefront of employer protection laws in the country. Only one other state (NY) has a similar law.



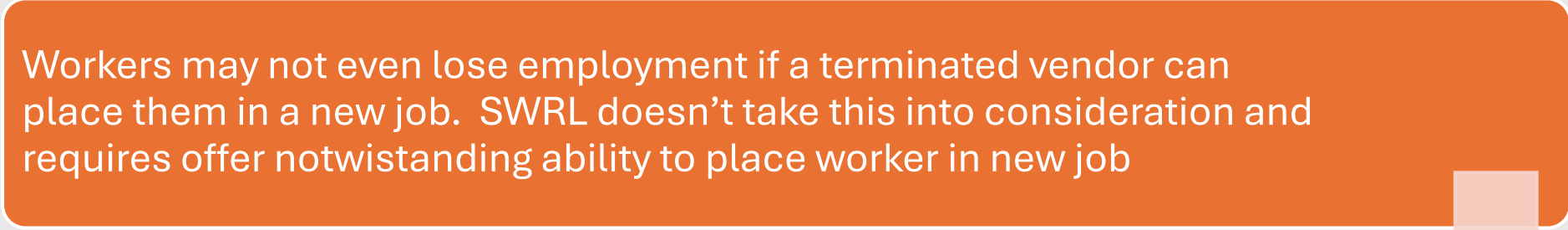
SWRL protects those who are among the lowest paid workers in the workforce, but who are subject to sudden and unanticipated layoffs.



Only requires Successor Employer to offer employment for 60 days, and workers can still be terminated for cause

# Business Interest Lobbyist Arguments in opposition to SWRL

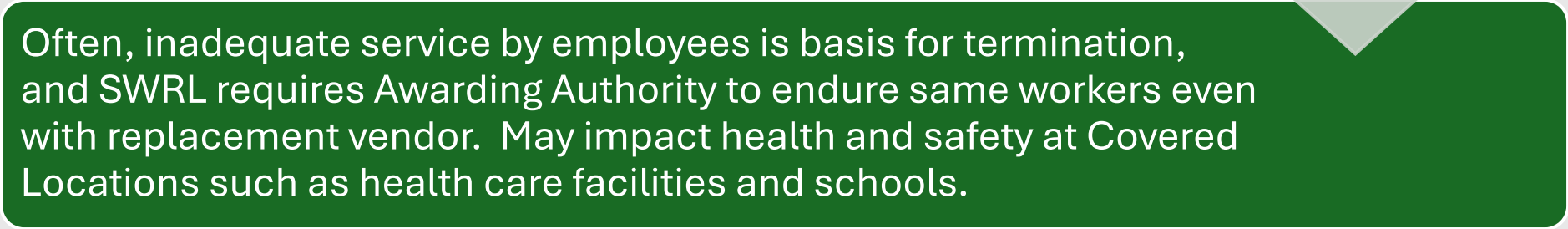
Workers may not even lose employment if a terminated vendor can place them in a new job. SWRL doesn't take this into consideration and requires offer notwithstanding ability to place worker in new job



Affected Service Employees can use unemployment insurance until they find a new job.



Often, inadequate service by employees is basis for termination, and SWRL requires Awarding Authority to endure same workers even with replacement vendor. May impact health and safety at Covered Locations such as health care facilities and schools.







## Unanswered Questions and Potential Legal Issues

- Invalidates restrictive covenants, but for how long? Does the voiding extend beyond 60 days?
- Proprietary information and trade secrets
- Liability Exposure from Service Employee conduct – no statutory indemnification

# New Jersey Temporary Workers' Bill of Rights



PROVIDES NEW PROTECTIONS FOR TEMPORARY WORKERS IN CERTAIN OCCUPATIONS.



PROVIDES ENHANCED OVERSIGHT AND REGULATIONS OF TEMPORARY STAFFING AGENCIES AND THE COMPANIES AT WHICH THE TEMPORARY WORKERS ARE PLACED.



PROMOTES PAY EQUITY BY REQUIRING EQUAL PAY AND BENEFITS (OR THE CASE EQUIVALENT) FOR TEMPORARY WORKERS RELATIVE TO SIMILARLY SITUATED DIRECT-HIRE EMPLOYEES



SIGNED INTO LAW BY GOVERNOR MURPHY ON FEBRUARY 6, 2023 AND LAW BECAME EFFECTIVE ON AUGUST 5, 2023.

# Scope of the Bill of Rights

- Applies only to “temporary laborers,” defined as “a person who contracts for employment in a designated classification placement with a temporary help service firm.”
- There are currently 127,000 temporary workers in New Jersey, but the Bill of Rights only applies to certain industries and job scopes.

**Protective Service Occupations (i.e., lifeguard)**

Food preparation and service

**Building and grounds cleaning and maintenance**

**Personal care and service (hairstylists, childcare, concierge)**

Construction and trades (electricians, carpenters)

**Installation maintenance and repair**

Production (butchers, metal workers, drycleaners)

**Transportation and logistics**

# Requirements of Bill of Rights

- Covered workers must be paid no less than the average rate of pay and cost of benefits provided to direct-hire employees in similar positions and with similar skills
- Prohibits temporary service firms from restricting the rights of temporary workers to accept permanent employment
- Restricts the amount temp agencies can charge in placement fees
- Requires temp agencies to be certified by the DCA
- Requires certain disclosures to temporary workers upon assignment, including itemized wage statements

# New Jersey Department of Labor and Workforce Regulations

Regulations define “benefits” to mean “employee fringe benefits, including but not limited to, health insurance, life insurance, disability insurance, paid time off (including vacation, holidays, personal leave and sick leave in excess of what is required by law) training, and pension.”

Fringe benefits that an employer is required by law to provide its employees, such as NJ State Paid Sick Leave, are not included under the definition. However, the proposed regulations do not provide any additional guidance on how to calculate the value of benefits that must be considered as part of the analysis.

The Regulations instruct employers to provide firms with “a listing of the hourly rate of pay and cost per hour of benefits for each employee of the [employer] who the [employer] determines would be a comparator employee” once the employer contracts with the firm for the services of the temporary laborer. If the employer pays a comparator employee on a salary basis, the comparator employee’s annual salary must be divided by 2,080 hours to determine the comparator employee’s hourly rate of pay. Similarly, “[t]o calculate the cost per hour of benefits, the annual cost to the employer of benefits [must] be divided by 2,080 hours.”

- A firm would then be required to use the method set forth in the proposed regulations to determine “the appropriate hourly rate of pay for the temporary laborer on a designated classification placement,” which involves averaging the hourly rate of pay and cost of benefits for comparator employees and then “[s]ubtract[ing] the cost per hour of benefits provided by the [firm] to the temporary laborer from the sum of the [comparator employees’] average hourly rate of pay [] and the average cost per hour of benefits” to determine the hourly rate of pay the firm will pay the temporary labor.



# Employer Recordkeeping Requirements

- The Bill of Rights requires employers to remit, within seven days from the last day of the work week worked by the covered temporary worker, the following information to the firm: “(1) the name and address [of the temporary laborer,] (2) the specific location sent to work, (3) the type of work performed, (4) the number of hours worked, (5) the hourly rate of pay, and (6) the date [the temporary laborer was sent to work].”
- The proposed regulations provide that an employer will not violate the Law if they “ha[ve] been precluded from submitting those time records for reasons beyond its control.” However, the regulations do not discuss what reasons would qualify as beyond an employer’s control. An employer who fails to submit the necessary information will be subject to civil penalties up to \$500.

# Questions?



# **Structural Integrity & Reserve Funding**

J. David Ramsey, Esq. & Ed San George, PCAM



# Our World has Changed – Structural Integrity and Reserve Funding

Presented by:

Ed San George, MPA PCAM

&

Dave Ramsey, Esq.



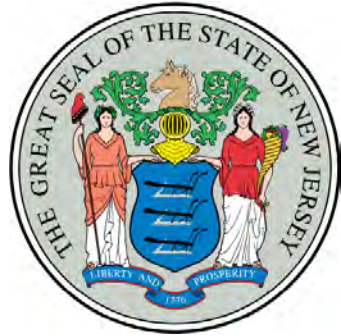


# Surfside

( the start )



# New Jersey Law – S2760



Periodic Inspections

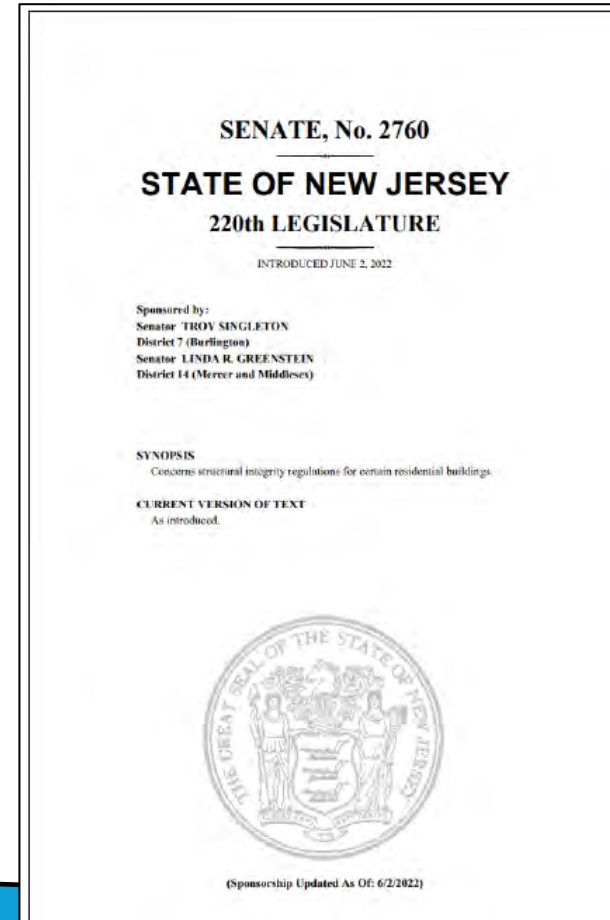
Reserve Study's

Reserve Funding

Maintenance

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

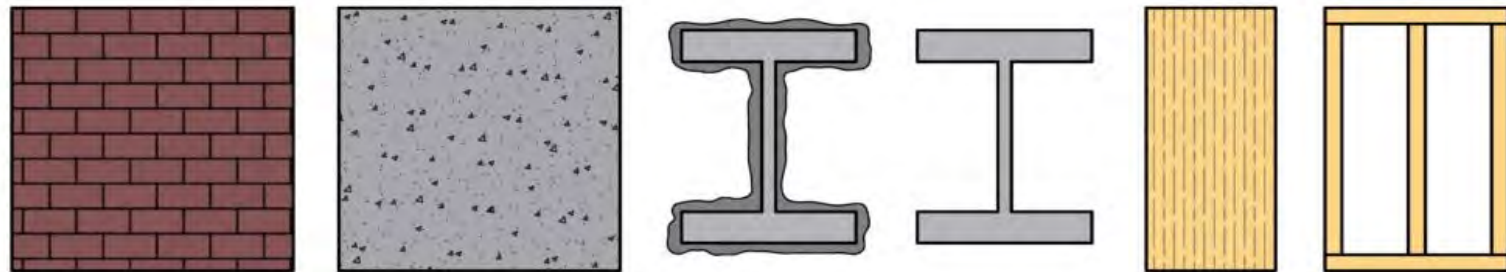
1. (New section) The Legislature finds and declares that:
  - a. The importance of the structural integrity of residential buildings in New Jersey has become a growing concern for many, especially in the wake of the tragic collapse of a high-rise, multifamily housing structure in Florida.
  - b. In light of these growing concerns, it is appropriate for the Legislature to put in place appropriate procedures for inspecting, evaluating and maintaining the structural integrity of certain residential housing structures within this State.





# What are the Structural Inspections and what's a Covered Building?

Under the statute, the structural inspections component only applies to certain types of buildings that are defined by the law as “covered buildings.” The statute describes “covered buildings” as residential condominium or cooperative buildings that have a primary load bearing system that is comprised of a concrete, masonry, steel, or hybrid structure including, without limitation, heavy timber and buildings with podium decks.



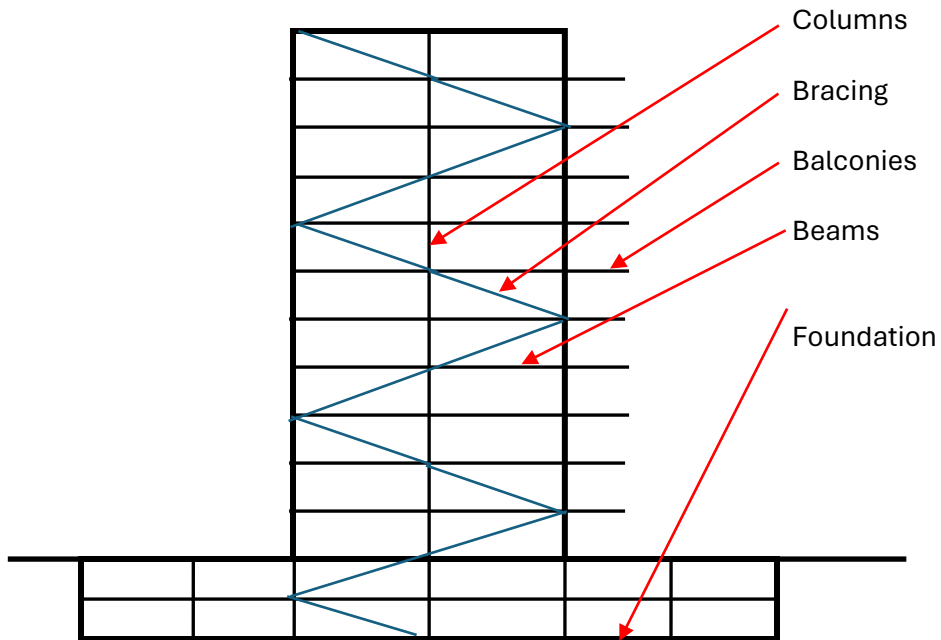
# What Buildings Do Not Require Inspections?

Under the statute, the structural inspections DO NOT apply to standard wood-frame buildings, such as single-family homes and typical townhouse projects



# What is Inspected ?

## The Primary Load Bearing System



Primary load bearing system is the assemblage of above ground structural components within a building that form a path by which external and internal forces applied to the building are delivered to the ground.

# **With Respect to Covered Buildings, What is the Required Time Period for the INITIAL Inspection?**

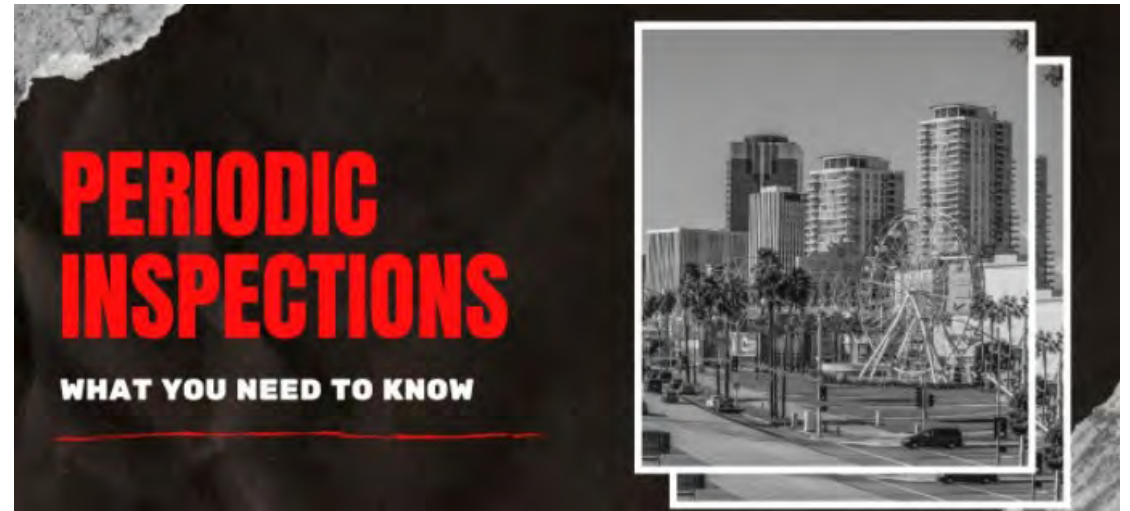
**For Covered Buildings that had a certificate of occupancy (C.O.) issued more than 15 years ago (e.g. prior to 2009) a structural engineer must perform a structural inspection within two (2) years.**

**For Covered Buildings that are less than 15 years old, the association must have a structural inspection within one year after the 15<sup>th</sup> anniversary of the issuance of the C.O.**



# What Are The Subsequent & Periodic Inspections?

- Buildings Up to 20 years after CO
  - 10 years maximum
- Buildings 20 years after CO
  - 5 years maximum



# What's Required for the Structural Report?

- The structural engineer must perform the structural inspection pursuant to the protocols established by the American Society of Civil Engineers.
- If the structural engineer determines that the primary load bearing system requires any maintenance or repair, the engineer will provide a time period within which the work must be performed.
- Copies of the reports must be sent to the local construction official and all unit owners, as well as any residents of the building who request a copy.

# Can the Board Vote to Assess or Borrow Funds for Major Corrective Maintenance to the Building Structure?

- . YES
- . The law does permit Boards to levy assessments or borrow funds even if the governing documents limit the board's authority to request a majority community vote.
- . The Board may do this only if there is an engineer's report that justifies an urgent and structural need.

# Structural Integrity and Reserve Law (the “Law”)

## FAQs Regarding Reserve Part of Law



# Structural Integrity and Reserve Law (the “Law”)

## FAQs Regarding Reserve Part of Law



# Must all community associations comply with the reserve requirements of the Law?

- All community associations having \$25,000 or more in capital assets that the association must maintain (i.e., roofs, siding, streets, sidewalks, etc.) must comply with the reserve requirements. The statute's defined term "covered building" only applies to the structural inspection requirements. It does not relieve associations without covered buildings from complying with the statute's reserve requirements.

If my association obtained a reserve study in the five years prior to adoption of the Law, does it need to obtain a new study to comply with the new requirements for reserve studies?

- If the association obtained a study within the past five years it is not required to obtain a new study before the fifth anniversary of the existing study. When the new study is prepared it must be prepared to be in conformance with the legislative requirements as well as the latest edition of the CAI National Reserve Study Standards of the Community Associations Institute and be prepared or overseen by a Reserve Specialist or an engineer or architect licensed by the State.

The association's reserve provider has advised that we must obtain a new Level I study, which is more expensive than a Level II or III study. Is this true?

- No, if it has had a Level I study previously done, it can choose:
  - A Level II study that includes a visible observation to determine if the remaining life of the assets remains as previously determined (minus the number of years since the prior study); or
  - A Level III study that includes only an update of the cost of replacing the assets since the prior study. The association should, however, obtain its reserve provider's advice concerning which level study is most appropriate.



# How does the association determine whether its reserve funding is adequate as required by the Law?

- If the association has funded the reserves in accordance the study, it is not deficient.
- If it has not funded the reserves in accordance with the study, then the deficiency is equal to the difference between what was to have been funded according to the study and what was actually funded.
- To avoid additional deficits, the association must, in the next budget cycle, bring the reserve budget up to the amount recommended by the study.

# May the association choose whichever funding plan it wishes for capital reserves?

- Yes, it may choose whichever funding plan best suits its needs.
- It is best to discuss with your reserve provider the funding most appropriate for your community.
- One of the most common is known as “threshold funding.” The common levels of threshold funding include five percent, ten percent, and zero percent (sometimes referred to as “baseline funding”).

# May an association switch funding plans to help make up for a lack of adequate reserve funding ?

- Yes, the association may switch funding plans provided the change would not result in the fund falling below zero during the projected 30-year period described in the study.

# How does the Law's 10-year catchup to compensate for a deficiency in the reserve funding work?

- First, the association determines the amount of the deficiency.
- Second, it calculates whether, if the amount of the deficiency is paid over two years would it increase the prior year's budget by more than 10 percent.
  - If it would not, the deficiency is required to be made up over two years.
  - If it would, then the association may divide the deficiency by 10 and make it up by including an amount equal to one-tenth of the deficiency in each of the next 10 annual budgets, provided the reserve fund would not fall below zero during the 10-year period.

# How does the Law's 10-year catchup to compensate for a deficiency in the reserve funding work?

- The association should obtain the advice of its reserve provider to determine if there are other available solutions to remedy a deficiency, such as changing funding plans or undertaking an update to its reserve study that may eliminate any need for a catch-up contribution to the reserve fund.

Is there anything in the Law that prohibits special assessments or borrowing in order to adequately fund reserves or make up a deficiency in the reserve fund?

- No, the Law does not change the association's authority to impose special assessments or borrow money in accordance with its governing documents.

What if my association has any additional questions concerning these FAQs or how the Law works?

- It should consult with its professionals to obtain individual advice based on the individual facts relevant to the particular association.

# Questions?



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