

# Florida Trend

FLORIDA'S BUSINESS AUTHORITY

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## Towering Uncertainty

More than 2 million Floridians live in condos subject to a new reinspection law passed in the wake of the Surfside disaster. For some, the price of keeping safe might cost them their homes.

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Condominium owner  
Sonja Przulj, Miami

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# TOWERING UNCERTAINTY

More than 2 million Floridians live in condos subject to a new reinspection law passed in the wake of the 2021 Champlain Towers South collapse. For some, the price of keeping safe might cost them their homes.

By Robyn A. Friedman

**Sonja Przulj loves her two-bedroom, two-bath condominium in Miami, located on the 21st floor of the 27-story Palm Bay Yacht Club, with spectacular views of Biscayne Bay, downtown Miami and South Beach. She paid \$285,000 for the corner unit in September 2021 after renting in the building for years.**

Przulj, 39, purchased at the height of the pandemic, when she was working nonstop as a nurse. "It seemed like it was meant to be," she says. "But the thrill was very short-lived."

That's because less than a year later, Przulj, who lives in the condo with her husband, Jean Pablo Vialle, and their five-year-old son, was hit with a \$145,000 special assessment by the condo association to pay for repairs in the aging building.

"It's an earth-shattering number," she says. And one she can't afford to pay.

Built in 1982 at the height of South Florida's high-rise condo building boom, the Palm Bay Yacht Club

Photo: Nick Garcia

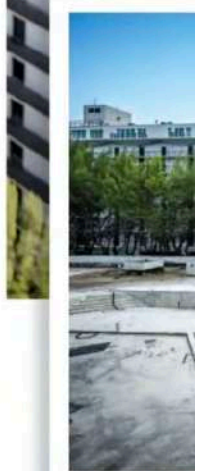
FLORIDATREND.COM AUGUST 2023 107



Condos



From her condo balcony on the 21st floor of the Palm Bay Yacht Club, Sonja Przulj can see Biscayne Bay, downtown Miami and South Beach. A \$145,000 special assessment from her condo association — her portion of a \$33-million repair bill for the 41-year-old tower — has soured her on condo living.



▶ **1.5 million**  
Condo units in Florida

▶ **3.5 million**  
Florida condo residents

▶ **912,376**  
Condo units more than 30 years old

▶ **479,435**  
Condo units 40 to 50 years old

▶ **105,404**  
Condo units more than 50 years old

▶ **2.2 million**  
Residents of condo units at least 30 years old; 40% of those units are in Miami-Dade County, Broward County and West Palm Beach.

Source: Florida Department of Business and Professional Regulation; Florida Bar Condominium Law and Policy on Life Safety Issues Advisory Task Force

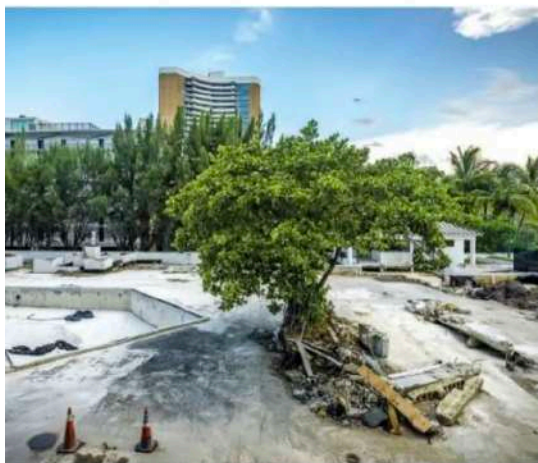
has not worn the years well, according to inspection reports from engineers hired by the condo management company. Facing its 40-year inspection, the tower's list of issues is reported to include cracks, crumbling concrete and separation of the stucco layers. Needed repairs include remediation or replacement of expansion joints, waterproofing and drain-

age, and window repairs, records show. The condo also needs its tennis court replaced and its pool and jacuzzi repaired. The total cost assessed to residents of the 235-unit building is estimated at \$33 million.

Przulj says that she'll have to pay the special assessment back in four quarterly payments over a year unless the condo association is able to obtain a bank loan to help finance the necessary repairs and improvement projects. In that case, it would be payable over 20 years, she says. Last year, she became one of a group of 10 Palm Bay Yacht Club residents who filed suit against the condo association, the property management firm and a number of contractors alleging that the state of the building is being exaggerated, that they are being overcharged and that the association mismanaged past upkeep and financial responsibility over the building. "There is no way myself, or probably half the building, can come up with that money," Przulj says. "I risked it all by buying this unit, and I have nowhere to go with my family."

Attorneys for those being sued have called the allegations false, saying the repairs are mandated by law and the condition of the tower is dire. It has been the subject of numerous hearings in front of Miami-Dade County's unsafe structures committee. "It defies logic to allege that the association and board of directors are deliberately acting in bad faith to put themselves in more debt than is necessary," defense attorneys wrote in one filing. The case is in mediation, but in April, Judge Thomas J. Rebull ruled that it would not be in the public interest "in light of the Surfside Condominium collapse" to further delay concrete restoration on the tower, including installing shoring to the condominium's parking garage.

The dispute pitting residents against each other is a scenario likely to be playing out again in Florida as state laws go into effect requiring older condos three stories and taller to be reinspected at earlier intervals and for condo associations to be more diligent in



photos: Nick Garcia





## Condos

funding reserves for on-going maintenance and repairs. The June 2021 collapse of the 12-story Champlain Towers South, killing 98 people in Surfside, laid bare safety concerns about Florida's older condo towers — the earliest ones now reaching past 50 years of age. Scores of other high-rises were built 40 years ago during a building boom in South Florida, an era when insufficient building codes and lax inspections were the subject of repeated grand jury investigations.

Before the collapse in Surfside, condo buildings in Florida weren't required to be inspected by a licensed architect or engineer after being occupied, with the exception of those in Miami-Dade and Broward counties which had enacted their own, stricter local ordinances. Champlain Towers South's 40-year inspection, as required under Miami-Dade's recertification program, was underway but repairs had not been made at the time it collapsed. When state lawmakers first responded to the disaster nearly a year later, the state began requiring all condominium buildings of at least three stories or higher to undergo a "milestone inspection" after 30 years, and every 25 years if they were within three miles of a coastline.

The buildings then would be required to be



A dozen condos along Tampa's iconic Bayshore Boulevard will soon be subject to Florida's milestone inspection law, Department of Business and Professional Regulation records say. Residents of older condos face steep new costs in assessments for repairs, funding reserves for future maintenance and insurance rate hikes.

### Florida's new condo inspection law

- ▶ Applies to buildings at least three stories tall.
- ▶ For buildings less than 30 years old, the milestone inspection must be completed by Dec. 31 of the year in which the building reaches 30 years of age and every 10 years thereafter.
- ▶ Buildings for which a certificate of occupancy was issued on or before July 1, 1992 must have their initial milestone inspection by Dec. 31, 2024.
- ▶ If justified by local environmental conditions, including proximity to seawater, local enforcement agencies responsible for enforcing the milestone inspection requirements can opt to require a 25-year inspection.

inspected at 10-year intervals going forward. Condo associations also were required to ensure they had sufficient cash on hand for future structural repairs and could no longer waive or underfund reserves. The 2022 law caused such upheaval that this spring lawmakers and the governor pushed the requirement for coastal buildings back to 30 and are leaving it to local governments to decide if a 25-year inspection is "justified by local environmental conditions" including proximity to seawater.

The scale of who might be affected by the reinspections and ensuing costs is massive, according to legal and engineering experts. When the Florida Bar produced its report on the Surfside collapse, it cited figures from the Florida Department of Business and Professional Regulation saying there are more than 912,000 condominium units (out of some 1.5 million total units) in Florida at least 30 years old. Calculated using U.S. Census formulas, the state pegs the number of people living in condo units 30 years and older at upwards of 2 million.

But the uncertainty faced by those now living in older buildings with expensive repairs remains as some associations come to realize past boards never funded the reserves needed to maintain aging buildings, and now the state gives them no option. "I'm very proud of how quickly my boards have leapt into action," says Donna DiMaggio Berger, a partner at Becker & Poliakoff in Fort Lauderdale who is board certified in condominium and planned development law. "But some are now being threatened with recall by unit owners who want to throw a monkey wrench into the maintenance and repair process because they don't want to pay assessments. That is the type of craziness going on now."



With so many unit owners unable to pay special assessments, some boards are seeking loans to help cover the cost of repairs — loans that are collateralized by the association's receivables from residents' payments on assessments, says Telese Zuberer, an attorney with Icard Merrill in Sarasota who represents homeowner and condo associations. Others expect the payments to be made on relatively short payment schedules, like Przulj could be required to do.

Unit owners opting to sell when facing a special assessment may find it difficult or impossible to find a buyer willing to assume that obligation. But some developers are capitalizing on the situation by attempting to buy out entire towers.

Edgardo Defortuna, president and CEO of Fortune International Group in Miami, is among a group of South Florida developers who targets older condo towers — particularly those in prime locations or on the waterfront — for redevelopment, buying out entire towers of homeowners, dissolving the condo association and tearing the towers down. Defortuna says that due to the scarcity of land in South Florida, the projects make sense, especially when condo owners are paid well above market rates to vacate the units. "You can make an offer for all the units in the building that is above the market price of each individual unit," he says. "Then you can terminate the condominium, knock it down and build a new tower."

Defortuna says Fortune has completed three condominium terminations to date and has plans to acquire additional properties. Fortune typically offers owners up to twice the market value of their units, he says, and the firm's brokerage arm helps them find a new place to live.

"If you spend \$100,000 redecorating your unit and change your bathrooms and kitchen, a buyer might be willing to pay \$100,000 extra because this unit is better than the rest," he says. "But if you're special assessed for \$100,000 to pay for fixing columns and filling cracks to make sure the building won't fall down, a buyer coming in will see you have the same old unit as before and won't pay any more for it. You're not adding any value to your unit other than making the building sound structurally."

While much of the initial impact of the post-Surfside reforms is being felt in South Florida, where most of the state's earliest condo towers were built, the ramifications of the new



Miami-Dade County enacted its reinspection law decades before the Champlain Towers South disaster after the 1974 collapse of the U.S. Drug Enforcement Administration's field office. Seven were killed when the 49-year-old building's roof caved in, collapsing the structure. Engineers determined salt in the aggregate rock used when making concrete can corrode reinforcing steel due to the area's humidity and salty air.



## No Easy Out

While some condo tower boards are seeking loans to help cover the costs of needed repairs, it's not a slam dunk solution for all. Governing documents sometimes don't give condo boards the authority to take out a loan. "In other cases, the windstorm deductible the association has chosen (to make the coverage affordable) is too high to make the association a feasible borrower for most banks," points out Donna DiMaggio Berger, a partner at Becker & Poliakoff in Fort Lauderdale who specializes in condominium and planned development law. "It's a perfect storm with the state doing little currently to sort it out."

photos: UPI top; Becker & Poliakoff bottom

FLORIDATREND.COM SEPTEMBER 2023 111



Condos



Years before the collapse of Champlain Towers South, developers of luxury condos were zeroing in on aging towers in prime locations. Edgardo Defortuna is among those who attempt complex bulk buyouts of old condos to score prime sites for future towers, such as this site where he will build The St. Regis Residences.

photo: Nick Garcia top; rendering: DBOX bottom

## Out with the Old

Coming in 2027: The St. Regis Residences, Sunny Isles Beach, Miami, a two-tower luxury condominium on Collins Avenue. Under development by Fortune International Group and Chateau Group, the project will rise just 5.4 miles from the Surfside site where Champlain Towers collapsed.

With prices starting at \$5.1 million, the St. Regis is situated on 4.7 acres, with 435 linear feet of ocean frontage — a prime location in a market where buildable land is scarce. It will be constructed on land previously occupied by La Playa de Varadero, a condominium built in 1954. The developers were able to acquire the site in 2014 by reaching agreements with the owners of all 347 units to buy them out at a total cost of \$112.5 million. They then terminated the condominium and demolished the building.

"When a buyer says they will pay you one and a half or two times what your unit is worth because they want to knock it down and build a newer building, it's in many cases very appealing," says Edgardo Defortuna, president and chief executive officer of Fortune International Group in Miami.

Of course, not all owners want to move. Many residents of aging condos are older adults who don't want to be uprooted, and that may present a challenge to a developer seeking a 100% buy-in by the unit owners.

"There are a lot more variables in the equation for some people," Defortuna says. "Also, greed becomes a huge obstacle. You have to dedicate money and legal fees to all these obstacles. So, it has a lot of potential, but it's not as easy as it sounds."

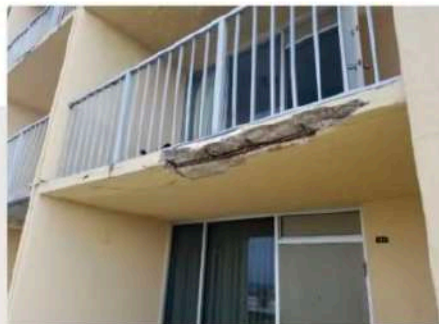
Designed by Arquitectonica, with interiors by Sao Paulo, Brazil-based Patricia Anastassiadis, the units at the St. Regis Residences will have two to five bedrooms and range from 2,000 to over 10,000 square feet. Residences will have private elevators, Molteni&C | Dada kitchens, top-of-the-line appliances, including a wine cooler, and unobstructed ocean, city or Intracoastal views.

— By Robyn A. Friedman

inspection and reserve laws eventually will be felt statewide. Bilzin Sumberg Partner Joseph Hernandez, who represents developers in condo terminations and redevelopment, says there's no way to sugarcoat that many condo-dwelling Floridians are living in homes not built to last.

"That's a cold hard reality," Hernandez says. "They all have a variety of functional obsolescence issues — poor engineering (or) they are starting to degrade because they are by the water. The value of the units continues to decline. It doesn't take a genius to figure out when you have increasing costs and a decreasing value of the unit ... There may be some special cases out there where the building over their history, they may have made some changes and stayed ahead of it. But the majority of them have reached the point where it is only getting worse."

Berger, the condominium association attorney, says the new law is the final cap on an era where a coastal residence is attainable



## Healthy History

Panama City engineer Michael Weber can tell when a building has been well maintained by what he doesn't see. He doesn't see "spalls," or chunks of concrete that have broken off a building after years of expanding during hot months and contracting in cold.

Weber, owner of MK Weber Structural Engineering, has done a half-dozen milestone inspections in the past year. Most buildings have been well maintained, he says, minimizing the assessments unit owners will face to repair any deficiencies brought on by age and the elements.

Many of the area's waterfront condos are used for vacation rentals, and that helped make owners more willing to pay for inspections and maintenance over the years. Condos with mostly permanent residents tend to have older populations, less able or interested in spending their limited incomes on assessments to stave off structural defects they usually can't see.

"They're looking at it as saying 'If this building can last another 10 years, I'll be gone by then,'" Weber says. State law now eliminates that kind of gamble. — By Michael Fechter



## Condos

for most buyers. “Developers marketed condominiums and cooperatives as your little slice of affordable paradise where you could live on the ocean and enjoy those views,” Berger says. “But it seems like only the very wealthy are going to be able to afford to live in older coastal buildings. Still, if Florida ends up with the safest housing stock in the country, that is a very positive thing.”

The prospect of a \$145,000 special assessment and the ensuing court fight have soured Palm Bay Yacht Club resident Przulj on condo life. “I love this building, and everyone who comes here sees how special it is,” she says. “But living in a condo feels like you’re never in control. I don’t know if this was such a smart move.”

### Remaining Gaps

Legislators amended the Building Safety Act last spring to grant local enforcement agencies the discretionary authority to give condo associations more time to complete their initial milestone inspection. But some of those changes could have dangerous unintended consequences, says Jordan Isrow, an attorney with the Government Law Group in Fort Lauderdale.

One change lets local authorities extend the milestone inspection deadline “upon a showing of good cause by the owner or owners of the building” that it can’t be completed in a timely manner. But good cause is undefined, and there is no maximum extension time.

Local government staff “only has so much bandwidth and resources” to deal with incoming requests, says Isrow, who also serves on the Parkland City Commission. The law’s ambiguity can create “a Russian doll of responsibility” for enforcement and compliance in which no one knows where the buck stops.

— By Michael Fechter



Champlain Towers South collapsed more than two years ago. Investigators say the condo’s concrete columns and pool deck were constructed improperly and its steel was corroded.

### Relief for Miami-Dade Condo Owners

Miami-Dade County condo owners making less than 140% of the area median income can apply for assistance to pay for special assessments for rehabilitation or repairs due to applicable building integrity recertification requirements. That means that an individual condo owner earning less than \$95,620 is eligible.

The county’s Condominium Special Assessment Program is limited to those who reside in the unit as their primary residence. Approved applicants can receive up to \$50,000 as an interest-free loan payable over 40 years.

The program’s initial pilot phase was funded with \$9 million. As of mid-August, \$5.5 million is committed to 350 applications, according to the Office of Miami-Dade County Mayor Daniella Levine Cava. The mayor plans to seek additional funds to continue and expand the program.

“After the tragedy in Surfside, assuring building safety has become more important than ever,” said Levine Cava in a written statement provided to FLORIDA TREND. “Miami-Dade County already had one of the strongest building codes in the country, which included a 40-year recertification process. We launched the Condominium Special Assessment Program last year to support condo owners who cannot afford the special assessments required for life-safety repairs identified in the recertification process. Unfortunately, the prior lack of oversight of condo and homeowners’ associations has led to an increase of properties facing unsafe conditions and/or fraud accusations, which in turn led to very high assessments that many property owners can’t afford. The Condominium Special Assessment Program plays an important role in tackling the housing affordability crisis, as many condo owners and homeowners are forced to move out of their properties or lose them because they can’t afford the increasing maintenance costs that sometimes come after special assessments.”

— By Robyn A. Friedman