



**NEW CASTLE COUNTY COUNCIL
COMMON INTEREST COMMUNITY
TASK FORCE
RECOMMENDATIONS**

May 1, 2023

EXECUTIVE SUMMARY

Motivated by the tragedy of the Champlain Tower South condominium collapse in Surfside, Florida, New Castle County Council assembled a task force comprised of a coalition of experts in various aspects of common interest communities, including engineers, legal experts, land use experts, building experts, and professionals from various backgrounds, understanding that changes to New Castle County Code and inspection laws are needed to ensure the safety of buildings and structures in New Castle County.

The Task Force was comprised of the following members:

- *Mitch Frumkin*, PE, RS (Kipcon Inc.), professional engineer and reserve specialist, Task Force Co-Chair;
 - *County Councilman John Cartier*, as Co-Chair of the County Council Finance Committee, Task Force Co-Chair;
 - *County Councilwoman Kilpatrick*, Co-Chair of the County Council Land Use Committee;
 - *County Councilman Tim Sheldon*, Co-Chair of the County Council Public Works Committee;
 - *David Holston*, Asst. Land Use Mgr., designee for Richard Hall, General Manager of the County Department of Land Use;
 - *Christopher Curtin*, Esq., Ombudsman from the Delaware Department of Justice, Office of the Common Interest Community Ombudsperson;
 - *Chad J. Toms*, Esq., (Whiteford, Taylor & Preston), representative of the Del. Common Interest Community Advisory Council;
 - *Jacqueline Davis*, CPCU, Senior VP (Hugh Wood, Inc.), insurance professional with relevant experience;
 - *E. Lee McCabe*, CPA CVA, (PKS & Co.) auditor with experience relating to common interest communities, including condominiums;
 - *Lisa Bolin*, Sr. Community Mgr. (FirstService Residential), condominium/common interest community manager;
 - *Buzz Quillen*, President (H.H. Quillen & Co.), condominium/common interest community manager;
 - *Nicole Skaro*, CMCA EBP, (CIT), representative of a financial institution with relevant experience;
 - *Grover Ingle*, the Delaware State Fire Marshall;
 - *Dan Edgar*, common interest community unit owner;
 - *Lisa Diller*, common interest community unit owner;
 - *Dawn M. Bauman*, Senior V.P., CAE (Community Associations Institute);
 - *Phoebe Neseth*, Esq., Dir., CMCA EBP (Community Associations Institute)
- Michael P. Migliore*, Esq. (legal counsel to the Task Force)

In this, the first leg of a comprehensive two-prong approach, County Council established the Task Force to recommend necessary changes in the law to ensure the safety of residential buildings and residents thereof. This is the first step in that endeavor. County Council intends to follow up on these ground breaking recommendations with the goal of identifying potential funding for common interest communities, including condominiums, to assist with unexpected assessments.

Meanwhile, this group presents the following summary of recommendations of the New Castle County Council Task Force, which are accompanied by proposed legislation.

SUMMARY OF RECOMMENDED CHANGES

All buildings require periodic inspections and ongoing maintenance to maximize their lifespan and to ensure their structural integrity and the safety of the occupants who live there. The precautions included within these recommendations are in response to natural aging and exposure to the environment, not due to improper construction. The mandatory Structural Inspection program outlined below will address signs of progressive degradation of the structural frame.

However, other components of buildings can also impact the life and safety of occupants and will also degrade over time. Accordingly, it is recommended that, in addition to the building structure, the exterior envelope of buildings also be inspected on a periodic basis for progressive signs of aging and degradation to assure the safety and integrity of those systems as well as to protect the underlying structure from exposure to the elements which can travel through weaknesses in the exterior façade.

Whether an older building, or a new one, preventive maintenance programs should be established by building owners to assure items such as protective coatings for concrete, paint on structural steel, expansion and control joints, and other elements crucial to maintaining the health of a building structure remain functional. However, these programs are not always established by all building owners.

To assure that all structures remain safe regardless of maintenance programs put in place by building owners, the Task Force recommends that New Castle County adopt periodic structural and façade inspections similar to programs adopted in other jurisdictions in the United States.

BUILDING TYPES

The recommendations set forth herein apply to residential common interest community buildings, including condominiums and cooperatives, as defined by the *Delaware Uniform Common Interest Ownership Act, Delaware Code Title 25, Chapter 81.*

TYPES OF INSPECTIONS

The recommendations are for periodic structural inspections and inspections of the building's façade, and include the following:

- ◆ Inspections of applicable building structures and facades is required for all residential common interest community buildings, including condominiums, made up of certain identified materials and/or that have facades over a certain height or have external balconies.
- The structural inspection requirements would be based on all buildings in which the primary load bearing system (PLBS) is constructed of concrete, masonry, steel, or heavy timber, in addition to such buildings with structural slabs over unconditioned space.
- The Primary load bearing system (“PLBS”) means the structural components within a building comprised of columns, beams, and/or bracing that form a path by which external and internal forces applied to the building are delivered to the foundation (*See diagram*).
- The façade inspection requirements would be based on the exterior walls and all attached appurtenances for all buildings 4 stories or taller unless the building has balconies below 4 stories, in which case such balconies also must be inspected.
- ◆ Inspections are to be conducted under applicable industry standards for all buildings in this category and are to be conducted prior to issuance of a certificate of occupancy and post issuance of the certificate of occupancy.
- ◆ *Pre-issuance of a certificate of occupancy*: The inspector (a “design professional” who is an engineer or architect with necessary qualifications) is to inspect and confirm that the primary load bearing system (“PLBS”) and/or the façade as-built is equivalent to the proposed design.
- If a design professional determines that the PLBS and/or the façade is not in conformance with the building plans, the applicant shall provide additional plans which show conformance with a modification to the PLBS and/or façade.
- The creation of or repair, renovation, alteration, or modification of the PLBS and/or façade of a covered building required pursuant to any inspection shall be conducted by a design professional prior to issuance of a certificate of occupancy.
- Payment for inspections prior to issuance of the certificate of occupancy (“CO”) and any required repairs is the responsibility of the building owner(s).
- The Department has the authority and responsibility to require repair recommendations be acted upon by the owner.

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RECOMMENDATION

Establish Countywide Mandatory Structural Inspections for Residential Common Interest Community Buildings, including Condominiums, dependent on Construction Material.

STRUCTURAL INSPECTIONS OF COVERED BUILDINGS

Initial Structural inspections of covered buildings where the certificate of occupancy was issued prior to enactment of the new law:

The PLBS of covered buildings must be inspected according to the most recently published ASCE *Guideline for Structural Condition Assessment of Existing Buildings* or other recognized equivalent standards by a design professional within the earlier of 2 years of the effective date of the new law or 60 days after observable damage to the PLBS. If damage is observed which presents an immediate safety hazard, it must be acted on accordingly. A written report shall be issued that identifies all corrective maintenance and repairs necessary for the PLBS.

Initial Structural inspection where a certificate of occupancy was issued after the effective date of the new law:

An initial structural inspection shall be undertaken by a design professional within 15 years of the effective date of the new law passed by County Council.

Subsequent inspections:

The design professional will determine the time for the next structural inspection, which shall not occur more than 10 years after the preceding inspection during the first 20 years following issuance of a CO, or more than 5 years after a preceding inspection if the covered building is more than 20 years old.

If the design professional determines that unsafe and imminently dangerous conditions exist such that the observable damage compromises the structural integrity of the PLBS, immediate action is required. When such conditions are discovered, remedial steps to avoid harm to people or property shall be taken as required under *New Castle County Code* Section PM 109.

Structural Inspection Reports:

The design professional must issue a written report consistent with industry protocol describing the condition of the PLBS, including among other factors the need for corrective maintenance or repairs for the PLBS. The report must provide additional information necessary to evaluate all concerns. Written reports issued by the design professional must be provided to the covered building owner(s) and shall be made available to any resident of the covered building upon request and must be provided to the Code official and the Department, and posted in a prominent location in the building, and recorded with the Office of the Recorder of Deeds.

COSTS OF INSPECTIONS & REPAIRS

The costs of inspections and repairs should remain with the building owner. While budgets for these costs are outside the scope of this group's review, the Task Force recommends that all building owners should have a budget and a plan for continued building inspections and maintenance, which will be funded in the Reserve Study.

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RECOMMENDATION

Establish Countywide Mandatory Façade Inspections for Residential Common Interest Community buildings, including Condominiums, 4 Stories or More

FAÇADE INSPECTIONS OF COVERED BUILDINGS

Initial Façade inspections of covered buildings where the certificate of occupancy was issued prior to enactment of the new law:

The façade of covered buildings must be inspected according to the most recently published ASCE *Guideline for Condition Assessment of the Building Envelope* or other recognized equivalent standards by a design professional within the earlier of 2 years of the effective date of the new law or 60 days after observable damage to the façade to determine if conditions exist that may affect the integrity of the façade components as well as the potential for moisture infiltration that could lead to deterioration of the underlying building components. If damage is observed which presents an immediate safety hazard, it must be acted on accordingly. A written report shall be issued that identifies all corrective maintenance and repairs necessary for the façade.

Initial Façade inspections where a certificate of occupancy was issued after the effective date of the new law:

An initial façade inspection shall be undertaken by a design professional within 5 years of the effective date of the new law passed by County Council or 60 days after observable damage to the façade.

Subsequent inspections:

Subsequent façade inspections are to be performed consistent with the time identified in the report, which shall be within 5 years of the initial inspection. The design professional will determine the time for the next façade inspection, which shall not occur more than 5 years after the preceding inspection. If the design professional determines that an unsafe and imminently dangerous condition exists, necessary remedial steps to avoid harm to people or property shall immediately be taken under Section PM 109.

Façade inspection reports.

The design professional must issue a written report consistent with industry protocol describing the condition of the facade, including among other factors the need for corrective maintenance or repairs for the facade. The report must provide additional information necessary to evaluate all concerns.

Written reports issued by the design professional must be provided to the covered building owner(s) and shall be made available to any resident of the covered building upon request and posted in a prominent location in the building, and recorded with the Office of the Recorder of Deeds. The report must be provided to the Code official and the Department.

COSTS OF INSPECTIONS & REPAIRS

The costs of inspections and repairs should remain with the building owner. While budgets for these costs are outside the scope of this group’s review, the Task Force recommends that all building owners should have a budget and a plan for continued building inspections and maintenance, which will be included in the reserve study.



RECOMMENDATION

Update the Reserve Standards in the *Delaware Uniform Common Interest Ownership Act* for Residential Common Interest Community Buildings.

The Task Force recommends that the *Delaware Uniform Common Interest Ownership Act*, *Delaware Code* Title 25, Chapter 81 (the “DUCIOA”) be updated to reflect contemporary best practices in the industry. In particular, the Task Force recommends the following requirements and/or clarifying language be added to the DUCIOA:

1. A reserve study must be prepared in conformance with the most current edition of the Reserve Study Standards of the Community Associations Institute or other equivalent recognized Standard.
2. The minimum amount of reserve funding to establish "adequate reserve funds" is those monies specifically dedicated for repair or replacement of common elements and facilities that have reached the end of the established useful life, based on the most recent reserve study, without the need for special assessments or loans during a minimum of a 30 year cash flow projection or as defined within the Reserve Study Standards.
3. The reserve study must include the ongoing cost and frequency of updating the study as well as the cost and frequency of both structural and façade inspections if required.

4. The initial reserve study included within the disclosure documents must be based on full occupancy and completion of all common area components.
5. The reserve study prepared by the declarant is to be accompanied by a letter of adequacy prepared by an independent individual who holds a reserve specialist designation from the Community Associations Institute or another recognized qualification standard or an independently licensed architect or engineer.
6. The reserve study must be updated during declarant control: Annually, when changes are made to the common elements; every 3 years; and at completion of construction to reflect the as-built conditions as well as the actual construction time frame to reflect when construction for each common area component was completed.
7. The reserve study shall be updated after declarant control a maximum of every 5 years or as specified in the most recently prepared study.
8. The reserve study shall include the cost and timing for any corrective maintenance as described within the most recent structural and façade inspections.
9. The addition of clarifying terminology in reference to “common interest communities,” in several Sections of the DUCIOA, in addition to modernizing the definitional section of the DUCIOA in reference to “adequate funding of reserves” and “reserve study.”



CONCLUSION

Consistent with other jurisdictions that have created similar investigatory bodies to assess their laws, the Task Force began by discussing what could be done to prevent building collapses and ensure the safety of buildings and their occupants. The cause of the Champlain Tower South collapse remains under investigation, and the findings will not be known for some time. It is contemplated, however, that a combination of factors likely led to the structural failure, including issues such as a deficiency in the original design, a construction error not following design drawings, environmental degradation of the structure, or a sudden change in loading conditions.

The recommendations contained herein are focused on preserving the long-term health of common interest community buildings by assessing environmental and other degradation of structures and their systems, and facades over the life of the building. Whatever standard is implemented for conducting a building inspection, building owners should not wait for damage to become evident to conduct periodic maintenance inspections. The Task Force encourages owners to be proactive in assessing and maintaining the buildings that New Castle citizens depend on to be safe and reliable.