

Meet the New Boss **Same as the Old Boss**

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The COVID-19 pandemic and the Champlain Towers South condominium collapse in Surfside, Florida are two major events that dominated the condominium world in 2020-2021. Now, five months into 2022, the fallout from these events is still very much in the forefront of the condominium industry.



ELECTIONS

COVID-19 changed the way businesses were managed and people interacted, causing condominium boards to explore different ways to fulfill their fiduciary responsibilities while adhering to changing rules formulated to keep the public safe.

During this time, we advised associations to consider reducing their quorums or to use plurality provisions to hold elections. When it became impossible to hold in-person meetings and elections, video and electronic means of communication became the only option. Over time, a lower court in Massachusetts ruled that condominium associations were permitted the right to hold elections by electronic means during the pandemic (even though that power was not expressly authorized in the condominium documents).

Many boards took steps to formalize alternative measures to conduct meetings and elections through amendments to the underlying declaration of trust or bylaws. Such amendments gave these boards the power to (a) conduct board and unit owner meetings using Zoom and other electronic and video means of communication; (b) inform board members and unit owners of such meetings by electronic notification; (c) vote during a virtual meeting; and (d) establish more realistic quorums through alternative measures as set forth above.

SURFSIDE COLLAPSE

The tragedy in Surfside, Florida resulted in the loss of many lives and a settlement in the amount of \$83M to support condominium unit owners and heirs as reported

by the *Miami Herald* on March 31, 2022. It also prompted a push for new legislation in various states which, if enacted as law, will mandate reserve accounts and routine structural engineering reports.

The Surfside Collapse has also greatly impacted loan transactions secured by condominium units. As mentioned in our article "Look out for Changes in the Lender Questionnaire", December 2021, the changes Fannie Mae announced to the list of specific disclosures required to determine loan eligibility could impact the financial eligibility of condominiums and certain co-op projects. In the article, board members and managers were cautioned to seek legal counsel before responding to questions relative to special assessments, deferred maintenance, and code violations. Boards were also advised to check provisions in both the master insurance policy and unit owner insurance policies to identify potential issues.

GENERAL

At this time, we also recommend boards review their vendor contracts to ensure the insurance, warranty and termination language is sufficient to adequately protect the associations in the event of a minor or major event. Boards should also make sure a current Certificate of Election and/or Appointment is in on record with the Registry of Deeds.

In closing, we should be mindful of past events and continue to address the issues at hand while remaining hopeful that the remaining seven months of 2022 will be uneventful.