



RESERVE FUNDING LEGISLATION – NOT A “SILVER BULLET”



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“We’ve got to do something about this!” That was the sentiment I heard from a number of my friends in the community association industry in the days and weeks following the tragic collapse of Champlain Towers South on June 24, 2021. For decades we’d joked about the regular annoying parts of community association life: pets, parking, and people. Here in the Reserve Study business, a bad day was when we had to recommend a special assessment in one of our reports. But that all changed with the Champlain Towers South tragedy that took 98 lives.

We have yet to find out how much the marginal design and construction shortcuts had to do with the eventual collapse, but there is no doubt that 40 years of deferred maintenance on a beachfront high-rise played a significant role.

So... what can we do to prevent another occurrence? We hear cries for “tighter legislation”. But I don’t believe legislation will solve this human behavior problem. We’ve all heard the saying that “when all you have is a hammer, everything looks like a nail”. So, I don’t blame legislators and the legal community for crafting new legislation in Florida and many other states. A simple, seemingly magical solution to a long-standing problem is often called a “silver bullet”. Let me suggest that a legislative solution is no “silver bullet” in this matter.

I believe it is going to take something greater, something nationwide. First, we need to change our language on the matter. We’ve been our own worst enemy by calling Reserve obligations “contributions” for decades, suggesting they are optional. The ongoing cost of deterioration needs to be viewed as a bill just like any other bill that needs to be paid. In the 2023 updated National Reserve Study Standards, the word “contribution” purposefully does not appear. Anything on the topic of Reserve funding uses the words “Reserve requirements”, “Reserve obligations”, “Reserve needs”, and “Reserve transfers”. There is nothing “voluntary” about the Reserve needs of a community association. Mother Nature and Father Time are significant adversaries, and they scoff at boards who claim they can’t “afford” adequate Reserve funding. The only good defense against deterioration is a strong budget for timely repairs and replacements.

Second, boards have for years been pursuing the goal of “low monthly assessments”. That is a fundamentally destructive goal, one designed to starve the association of the funds it needs to survive and thrive. Owning Real Estate is fundamentally expensive. Boards need to let go of the idea that “low monthly assessments” is good.

Third, consider how we all now drive with seatbelts fastened. Yes, it’s the law. But seat belts came about not just by legislation, but by the entire insurance industry agreeing that seatbelt use needed to be mandatory and changing their insurance rules to support that standard. That was a cultural change brought about by the combined effect of legislation and industry forces. The number of saved lives due to this cultural change is now almost incalculable.

We need to do the same thing for the community association industry. It starts with our language. It is followed by understanding that there are consequences to not spending enough money to take good care of our buildings. And third, it needs to be a combined effort from all sides. In addition to legislation posed from various states, expect to see the insurance industry tighten its requirements about maintenance and Reserve funding. Expect the lending industry (Fannie Mae, Freddie Mac, and individual lending institutions) to tighten their requirements. And expect a national scoring system to emerge, similar to how our own individual “credit-worthiness” is defined by a FICO® score.

So don’t wait for the “silver bullet” of a checkerboard of new legislation in your state that rescues us from our own bad decisions. Join me in calling for a cascade of change across our industry. Change your language and change your expectation for how much it costs to own Real Estate. That’s how we do our part to effectively prevent another Champlain Towers South tragedy.