

Condominium Law Panel

by Joel L. Chupack

On November 21, 2021, Decalogue held its annual joint program with Lincolnwood Jewish Congregation A.G. Beth Israel (LJC). Every year, we work with LJC to find a timely topic of interest to our members, and the annual program is always open to the public. This year, the topic was “Rehabilitating Condominium Law – What Matters Now.”

On the morning of June 24, 2021, without warning and without an impact, a wing of the Champlain Towers South in Surfside, Florida crumbled to the ground. People throughout this country and worldwide watched the replays of the building crumbling in disbelief. Our eyes could not believe the speed of the collapse. Our stomachs could not withstand the death and tragedy that awaited the families. Our minds could not comprehend how this could have happened. Ninety-seven people lost their lives.

This tragedy particularly shocked those who live in mid-rise and high-rise buildings. Also, considering that in any given year about half of all home sales in Chicago are condominiums, there was significant interest in whether a Surfside-like tragedy could happen here. Condo boards looked anew at their property and infrastructure. They called architects and structural engineers to inspect their buildings. Insurance companies revised their underwriting policies.

For the program, Decalogue compiled the following panel to address the many questions raised by the Surfside tragedy: Peter Powers, R.A., president and principal of Klein & Hoffman, an architectural and structural engineering company; Nancy Ayers, senior vice president of Alliant/Mesirov and manager of its Residential Risk Management Practice; Matthew Goldberg, partner at Richman, Goldberg & Gorham, a law firm with a concentrated practice in condominium law; and Judge Leonard Murray, Supervising Judge of the Housing Division of the 1st Municipal District of the Cook County Circuit Court.

Due to the pandemic, the program was conducted virtually. Each panelist gave a short overview of how the Surfside tragedy has affected their practice and procedures. This was followed by an hour of questions and answers. The panelists made insightful observations as to how the tragedy will affect their discipline. Among the matters they raised were the following:

Architect Powers explained the difficulty of attributing the collapse of Champlain Towers South to a particular architectural or engineering flaw, noting the countless theories out there, including the most recent theory that soil removal from construction of a new building south of the tower compromised the land underneath the tower. He discussed the differences among a “maintenance plan,” a “structural engineering report,” and a “reserve study,” and the need to plan and accumulate reserves for the repair and replacement of building systems and structural components.

Nancy Ayers emphasized the need for boards to understand what is, and what is not, covered under an association’s casualty policy. It was surprising to hear that the insurer of Champlain Towers South paid out the \$50 million policy in full even though “collapse” was an exclusion under the policy. The insurer determined that the cost of the litigation in defending lawsuits could have exceeded the policy limits. She warned that underwriting policies will change and that associations that do not have structural engineering reports and reserve studies may be uninsurable.

Matthew Goldberg alerted the audience to recent changes in Fannie Mae’s requirements for underwriting loans on condo purchases. If a building has significant deferred maintenance or inadequate reserves, Fannie Mae will not underwrite the loan. This in turn will make it harder to sell and drive down prices. He warned that condo associations must be vigilant in periodically assessing the buildings’ systems and components. This is easier said than done because, after all, the board is comprised of lay people, and there is a general attitude among condo owners to resist an increase in regular assessments or to levy a special assessment. He also discussed reserve requirements under the Condominium Property Act.

Judge Murray explained the operation of Housing Court, in general, and how it affects condominium buildings in particular. Before making findings and issuing rulings, Judge Murray, on occasion, has viewed properties with inspectors to better understand the severity and source of the code violation. If the violations are severe enough, the court could issue an order to vacate the property. Also, where there is no active board and violations exist which are dangerous or hazardous, the court can order that the building be de-converted from condominium status and sold.

In conclusion, there was a consensus amongst the panel that, although the Surfside tragedy occurred in Florida, it will affect the operations, financing, and insurance aspects of condominium ownership here in the Chicagoland area and across the nation.

The Hon. Joel Chupack is a Cook County Circuit Judge in the Chancery Division and a Decalogue Past President.

