Surfside Condominium Collapse:

Is There a Path Forward to Mitigate Risk of Catastrophe?

Originally Published August 2021
Updated August 2025

Author: David J. Hatem, PC

On Thursday, June 24, 2021, Champlain Towers South, a 12-story beachfront condominium in the Miami suburb of Surfside, Florida, partially collapsed. As of July 22, 2021, a total of 98 people are confirmed dead, all of whom have been identified.

I have been involved in several high profile – and tragic – events like the Surfside condominium collapse. Notably, the Minnesota I-35 Bridge Collapse in 2007, the Florida International University Pedestrian Bridge collapse in 2018, and the Tunnel Ceiling collapse in 2006, involving a portion of the Central Artery/Tunnel project in Boston. Following these types of tragic events, it is not unusual to experience reactive efforts to abrogate repose statutes. The Surfside condominium collapse certainly is not the first tragic event, and unfortunately will not be the last, to raise in the public arena issues about the fairness, risk and other policy balancing considerations that are inherent legislative policy judgments underlying the enactment of repose statutes.

Such tragic events, and ensuing reactive repose abrogation initiatives, prompt efforts to undermine the deliberative and reasoned legislative balances and judgments underlying repose statutes. The response to such events should not be to find more parties to sue or defenses to interpose or abrogate, but to develop constructive initiatives and mandates that will effectively address the root causes and mitigate the risk and occurrence of such tragic events.

Repose Statutes: Relevant Considerations

Repose statutes bar claims against consultants after a set time period following substantial completion of a project. Repose statutes were conceived, and are enacted, in recognition of the reality that improvements to real property projects ("projects") e.g., vertical buildings, bridges, tunnels, etc. – typically have a design and use life, and corresponding liability exposure period for design professionals, that last for several decades or longer.

Also, unlike a mass-produced and standardized product that undergoes several years of research, testing and development and actual performance prior to releasing in commerce for public use – projects, inherently, are a unique, one-off endeavor that are designed subject and sensitive to a number of short and longer-term, project-specific, owner programmatic and design choices and decisions, and other constraints, factors and influences – most of which are beyond the ability of the designer to control or direct.

Following completion of design and construction projects, there are many decisions, actions, inactions, indecisions, renovations, external factors (such as activities on adjacent sites and climate change) and basic owner elections and choices as to care, use, operation and maintenance (including upgrades and improvements) relevant to the initially-completed project – that can and often – quite expectedly and naturally – have a material and causal impact and influence on the long-term efficacy, sustainability and safety of the design and construction of the project as initially completed.

Confronted with repose legislation, state legislatures typically (presumably) consider and balance all of those and other relevant considerations in addressing and forming legislative judgments about a basic question:

> *"After what objectively-defined duration following project completion should the risk and potential liability of design professionals and contractors terminate?"*

The enacted statute embodies the legislature's policy and judgment in answering that question.

Owner Obligations: Completed Projects

Implicit in the preceding question and its analysis is the recognition that an owner of a completed project has an affirmative post-completion obligation in connection with the care, use, operation and maintenance of the completed project in the many decades ahead. What that owner does or does not do, and when and how such may be done, can and does have a material impact on the long-term design and construction efficacy, sustainability and safety of that project. Imprudent or untimely owner decisions are often the root cause of these tragic events.

Condominiums: Special Challenges and Risks

With that background, we should focus on condominiums. By definition, in condominiums there is no single "owner", and so decision-making as to the care, use, operation and maintenance of, as well as funding for, the project, occurs in various ways.

I will not go into the variances here; my point is that owner decisions and decision-making processes in a condominium typically are more dysfunctional, divisive, complicated and protracted than in other projects. Decisions for condominium projects tend to be more politically-charged and subject to a more protracted consensus-oriented process influenced, challenged, and constrained by individual and potentially conflicting and varied priorities and interests – e.g., long term v. short term ownership plans, financial capabilities, etc. Those and similar influences were in full force in the relevant background of the Surfside condominium collapse.

Certainly – despite potential and probable individual interests of condominium owners – no one sensibly and humanly would (or should) make decisions not to timely address known public safety hazards in the condominium project that could cause harm to other persons. That said, often issues can be timely identified, but their consequences may not be understood in terms of their seriousness at the time of decision-making.[1]

A Constructive Path Forward

In my opinion, condominiums provide an appropriate special case that, for certain classified (e.g. high rise) condominium projects, state or local authorities having jurisdiction ("AHJ") should require periodic and independent investigations and evaluations of principal foundation, structural, curtain wall, mechanical, environmental/climate change, and life/health safety components of the completed project.

The public should not be burdened with the expense of these studies; the expense should be funded by the condominium associations and on a mandatory basis. The independent engineers eligible for such commissions would be pre-qualified and regulated by, and under direct contract with, the AHJ, not the condominium owners, board or association. Those engineers would be subject to immunity from claims of the latter, but accountable, based on professional and contractual standards, to the AHJ. The condominium association would be required to retain other engineers and contractors to develop and effect necessary remedial measures.

The attention of the public and legislatures need to be re-directed from the negative reaction of abrogating repose statutes so as to reorient the legislative emphasis on the root cause of the tragic Florida situation – i.e. the failure and inability of condominium owners to effect prudent and timely decisions necessary for the care, maintenance and safety of their completed structure.

Legislation mandating independent engineering consultants to evaluate and make recommendations of certain classified condominium structures, and the conferral of the immunity to those consultants, are essential and in the public interest. This legislation would provide the engineering community with an opportunity to serve and promote public health and safety interests.

Why immunity? The engineering consultant would have no authority to require that its recommendations be implemented and would be at a substantial risk that the condominium association would ignore or delay implementation. The engineer's fee would likely be minimal but the liability exposure substantial. Also, engineers performing this role may not (depending upon state law) be subject to repose protection as the engagement would not constitute "an improvement to real property." As such, immunity is necessary, especially as the consultant is really functioning in a quasi-public capacity as somewhat of an agent of the AHJ (the latter of whom would already be entitled to immunity).

In circumstances in which the condominium association either is required by the AHJ or elects to effect recommendations of the independent engineering consultant, the association would be required to retain another (or the same) engineering firm to design or produce other work product to implement those recommendations. The latter engineer would be professionally and contractually accountable to the condominium association, and not protected by any immunity. This tragic event at Surfside provides a compelling reason and opportunity for design professionals to advance constructive proposals to enhance public safety. That affirmative approach should be the focus of the effort, discussion, and prudent and appropriately responsive initiatives. Repose abrogation should not be the focus as that reaction is not responsive to the root cause of the issue.

Author

David J. Hatem is a nationally recognized attorney whose practice specializes in representing engineers and architects and advising professional liability insurance underwriters on project-specific insurance matters. David teaches Legal Aspects of Civil Engineering at Northeastern University Graduate School of Engineering and has continuously served as counsel for the American Council of Engineering Companies of Massachusetts (ACEC/MA) since 1988.

Most recently, he was a member of the writing committee for Geotechnical Baseline Reports Suggested Guidelines, ASCE Manuals and Reports on Engineering Practice No. 154 (R. Essex, 2022); and served as a legal reviewer/resource for Geotechnical Baseline Reports: A Guide to Good Practice (CIRIA C807, 2023).

David J. Hatem, PC
Partner
dhatem@mgmlaw.com

1 While acknowledging that condominiums do create special risks, it is worth noting that in the 2007 Minnesota I-35 Bridge collapse event, the gauset plate (designed in 1964) that was determined to be the proximate cause of the collapse had been identified as concerning, and in need of imminent repair, in several inspection reports commissioned by and sent to MnDOT over a period of several years prior to the collapse; MnDOT either did not consider the repairs a priority or have funds available to do the repairs.

Similarly, in the Tunnel Ceiling collapse in Boston, the structurally compromised and loose/pulled condition of the ceiling bolts that failed in the completed tunnel could have been readily detected through routine post-completion state inspections. Since public entities are not protected by repose statutes, their abrogation as to the involved public entities is not proposed in reaction to such tragic events; however, public entities have the more potent and temporally unlimited defense of liability immunity.