



Lindborg & Mazor LLP

NEWSLETTER

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CA'S BALCONY INSPECTION LAWS

MYTH vs. REALITY

One apartment building owner recently gave us a copy of a "courtesy notice" sent by well-meaning California city officials ("City") to advise all apartment building owners and homeowner associations within its boundaries that CA's newly minted balcony inspection laws require all balconies and other "Exterior Elevated Elements" ("EEE") to be inspected by January 1, 2025. That is generally true. The notice goes on, however, to not only mandate the reporting of "identified required repairs" which the City obligates the property owners/managers to correct (subject to proper permitting and re-inspection requirements), but to also threaten to open "formal code enforcement cases" as early as "mid-2024" for what appears to be all properties whose owners/managers have not **already** submitted a report to the City. The inconsistencies and ambiguities in this City's "courtesy notice" are nowhere to be found in the governing statutes, thus crystallizing just how misunderstood CA's balcony inspection laws happen to be, even by those in positions of authority who have a hand in their enforcement. As such, this article explores some of the details of the laws which seem to cause confusion and discusses the commonalities and differences between the law governing EEE inspections of multifamily dwelling units like apartment buildings and the one regulating EEE inspections of condominium complexes.



A Little Background

Who can forget six college students' tragic deaths resulting from the collapse of a balcony in Berkeley, California? In its effort to prevent similar tragedies from occurring, the California legislature enacted two bills that became laws in 2019 requiring the periodic inspections of EEEs in certain buildings in our state. Specifically, multifamily dwellings with three or more units like college dormitories, apartments, and senior housing developments are subject to **Health & Safety Code Sec. 17973, aka SB 721** ("Apartment Law"), and HOAs are governed by **California Civil Code Sec. 5551, aka SB 326** ("HOA Law").

What the Two Laws Have in Common

Both laws define EEEs to consist of any **wood-framed structure extending outside of the exterior walls** of the building **more than six feet above ground** which have a walking surface, plus the structures' associated waterproofing components (designed to protect the wooden load-bearing elements from moisture). Clearly, this encompasses things like elevated balconies and decks, but also includes features such as exterior walkways, landings, and stairways. Both laws mandate that at least **some** of the EEEs in **all** of the buildings they govern are inspected (indeed, neither law requires that **every** EEE is inspected). Both laws require inspections to occur no later than **January 1, 2025** (unless the buildings are newly constructed, as further discussed hereinbelow) with subsequent re-inspections to take place at specified intervals. Both laws aim to determine whether the EEE are in "**a generally safe condition**." Both laws permit licensed architects and structural engineers to conduct inspections (with the Apartment Law also permitting inspections by other licensed or certified professionals, as further discussed hereinbelow).

Both laws also permit local authorities like the City to impose more stringent inspection requirements on property owners/managers of governed properties within their boundaries. The Apartment Law specifically authorizes municipalities to require submission to them of reports of any inspections performed on applicable multifamily dwellings.

Aside from the commonalities discussed, the two laws generally impose different requirements on the property owners/managers they govern. These differences are discussed below.

Who May Inspect

HOA Law: Currently, only a licensed architect or structural engineer may sign off on an inspection report. There is a bill (AB 2114) making its way through the 2024 legislature, however, which aims to add licensed civil engineers to this list.

Apartment Law: As noted, licensed architects and structural engineers are also on this list, but the list here is much broader, already encompassing civil engineers and also including building contractors with at least five years' experience in constructing multistory wood-frame buildings and holding an "A," "B," and/or "C-5" class license issued by the Contractors State License Board. Additionally, inspections under this law may be conducted by individual building inspectors or officials certified by a recognized state, national, or international association, **as determined by the local authority**. Among others, this would logically include building inspectors certified by the International Code Council (the organization which sets building standards reflected in the building codes) and those certified by the American Constructors Inspection Association (the organization which certifies most of the local government building inspection officials in California). Note, however, that any inspector/official conducting an inspection pursuant to this law is not permitted to also work for the local authority.

How Often Must Inspections Occur

HOA Law: By January 1, 2025 and every nine (9) years thereafter, although the initial inspection of a building permitted after January 1, 2020 must be conducted within six (6) years of the issuance of a certificate of occupancy and thereafter every nine (9) years.

Apartment Law: By January 1, 2025 and thereafter every six (6) years, although the initial inspection of a building permitted after January 1, 2019 must be conducted within six (6) years of the issuance of a

certificate of occupancy and thereafter every six (6) years.

How Many EEEs Must Be Inspected

HOA Law: This law requires inspection of a “statistically significant sample” of the EEEs in a building pursuant to a formula set forth in the statute. If inspecting a sample in accordance with the formula (rather than all the EEE, for example), the inspector must generate a randomly ordered list of all the EEE in the building and inspect the first number of listed elements required to achieve the statistically significant sample with, “[e]ach subsequent visual inspection conducted under this section [to] commence with the next exterior elevated element identified on the random list and... proceed[ing] in order through the list.” Anyone with basic knowledge of statistics will easily recognize that, according to this formula, the larger the number of EEEs in a building, the smaller percentage of the overall EEEs one must inspect.

Apartment Law: This law is a little more straightforward, requiring inspections of at least 15% of each type of EEE within a governed property. As such, 15% of all balconies, 15% of all stairways, etc. must be inspected.

Types of Inspections Authorized/Required

HOA Law: This statute expresses a preference for non-invasive visual inspections. These may entail an inspector simply looking at the EEE with the naked eye or doing so in conjunction with the use of a moisture meter, infrared technology, and/or a borescope, as the professional chooses.

This law provides that if, “the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components,” the inspector may conclude that a secondary, more intensive, inspection is appropriate and advise the property manager of the need for further inspection.

Apartment Law: This statute expresses a similar preference for “visual inspection.” Unlike the HOA Law, however, it neither expressly requires nor authorizes a secondary inspection, although the

inspector may include, “recommendations of any further inspection necessary” in an inspection report.

The Physical Presence Debate

Given that both the HOA Law and the Apartment Law state a preference for visual inspection and neither expressly requires the physical presence of the inspector, some take the position that physical presence of the inspector is not required. Others, however, have the opposite view. It is up to the legislature or the courts to clarify this point.

What Inspection Reports Must Contain

HOA Law: This statute requires an inspection report to contain:

- (1) the identification of the building components comprising the load-bearing elements and associated waterproofing systems;
- (2) the description of the current physical condition of the load-bearing elements and associated waterproofing systems, **including whether the condition presents an immediate threat to individuals’ health and safety;**
- (3) the expected future performance and remaining useful life of the load-bearing elements and associated waterproofing systems; and
- (4) recommendations for any necessary repair or replacement of the load-bearing elements and associated waterproofing systems.

Apartment Law: This statute requires an inspection report to contain:

- (1) photographs;
- (2) any test results;
- (3) a narrative sufficient to establish a baseline of the condition of the components inspected that can be compared to the results of subsequent inspections; and
- (4) **an identification of any EEE that poses an immediate threat to the safety of the occupants, and advice as to whether preventing occupant access or conducting emergency repairs like shoring is necessary.**

Although not specifically required, the report may also contain recommendations for “corrective work to an exterior elevated element that, in the opinion of the inspector, does not pose an immediate threat to the safety of the occupants.”

If repairs are recommended, the property owner may request that the inspector provide a final report after completion of the repairs. In any event, “Subsequent inspection reports shall incorporate copies of prior inspection reports, including the locations of the exterior elevated elements inspected.”

The Length of Time Required to Retain Inspection Reports

HOA Law: Reports must be retained for at least two reporting periods (this equates to **18 years**) and must be incorporated into the HOA’s reserve study.

Apartment Law: Reports must be retained for at least two reporting periods (this equates to **12 years**) and, “shall be disclosed and delivered to the buyer at the time of any subsequent sale of the building.”

Local Government Involvement

HOA Law: This statute mandates that if, “the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the report, **and to the local code enforcement agency within 15 days of completion of the report.** Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency” (emphasis added).

Apartment Law: Like in the case of HOAs, if an inspector of a multifamily dwelling finds that an exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of his/her inspection report to the building owner immediately upon completion of the report **and to the local code enforcement agency within 15 days of completion of the report.** The owner must take immediate corrective action.

If the report recommends that the owner perform non-emergency repairs, the Apartment Law mandates that the owner apply for a permit to perform the repairs within 120 days and then actually perform the repairs with 120 days of pulling the permit. If an owner fails to meet the repair obligation within 180 days, the inspector must notify both the owner **and the local authority** of the failure. If the repairs are thereafter not completed within 30 days of the notice, the owner is subject to **a fine of between \$100 and \$500 per day for every day that repairs remain incomplete.**

Who May Conduct Repairs

HOA Law: Any properly licensed professional.

Apartment Law: Any properly licensed professional, including the inspector himself/herself. Note that while this statute formerly forbade a contractor who did the inspection from performing the repair work, that prohibition was removed from the statute in 2022.