

New California Law Creates New Requirements for Building Maintenance and Inspections

By Alex M. Chazen



On June 16, 2015, six students died, and seven others were injured, when the fifth-floor balcony at an apartment building collapsed in Berkeley, California. In response to this tragedy, several lawsuits were filed, and a criminal investigation was launched by the Alameda County District Attorney. Eventually, most experts agreed that the largest contributing factor to the balcony's collapse was value engineering that occurred during the construction of the apartment building which led to a development of dry rot within the balcony. Now, you may be asking what this has to do with your real estate portfolio in Southern California.

In mid-September, Governor Jerry Brown signed Senate Bill 721 into law. The bill will amend California Health and Safety Code § 17973 to require destructive testing to be performed on load-bearing, wood-framed exterior elevated elements (balconies) every six years. Of note, prior to Gov. Brown's signing the bill, it was amended to not include common interest developments (condominium complexes) in this new maintenance scheme.

These inspections must be paid for by the building's owner and performed either by a licensed contractor, architect, or civil or structural engineer, or a certified building inspector or building official from a recognized state, national, or international association. The inspection must take a sample of at least 15% of the load-bearing components as well as any waterproofing elements of the balcony in order to determine whether they pose any threat to life safety. In an effort to prevent any gaming of the system, future reports will need to attach the old reports and evidence that the new sample was from a different location on the balcony than had been previously inspected.

Owners of buildings with wood-framed balconies have until January 1, 2025 to complete an initial inspection pursuant to the amended code section, and thereafter must comply with the new six-year inspection routine. Any building that is currently being converted to condominiums to go on sale after January 1, 2019 must have the inspection completed prior to the first unit's close of escrow.

If repairs are identified as being needed, emergency repairs must be made immediately. For non-emergency repairs, a permit must be applied for within 120 days and the repair completed within 120 days of the permit's issuance. Of note, in compliance with the recently amended Business & Professions Code § 7197, the inspector even if he or she is a licensed general contractor, cannot also make the repairs. If repairs are not completed within 180 days, civil penalties of \$100-\$500 per day may be imposed.

As with most regulatory schemes in California, this new inspection requirement will be extremely difficult to enforce and practical considerations regarding enforcement were not fully thought through when the law was drafted. In reality, there are only two times when the state would actually be able to verify whether the inspections took place – upon a sale of the property, or if something tragic occurred on a balcony. We will likely see the inspection reports have to be deposited to escrow at the time of sale of a building in order for the purchaser to make sure that they are buying a building that is fully compliant with the Code. If an accident occurred and there were no records of inspections, the penalties (as they are assessed on a per day basis) will be drastic for the owners/managers at the time of a likely lawsuit.

If properly constructed, wood-framed balconies can have extremely long lifespans, but as with everything, the quality of the construction is what matters most. The state is hoping that putting this law on the books will push maintenance and management companies to keep closer watch of the properties under their control and push owners to make repairs before life-safety issues actually arise, or before they attempt to sell their building.

The purpose of SB 721, to avoid another tragic accident on what was eventually found to be a wood-framed balcony in need of repair, is going to result in additional costs to building owners as well as additional opportunities for building inspectors to provide their services to owners. An unfortunate potential result of these invasive inspections could be damage caused by the inspection itself, as after two inspections, nearly a third of a balcony would have been destructively tested and then patched. Only time will tell whether this new requirement by the legislature will actually prevent further tragedy, but in the near-term, building owners will need to make sure that they comply with the new investigation requirements.

For any and all questions regarding this issue or any other related to real estate or construction law, Mr. Chazen is available for contact at (949) 812-4781 or achazen@kahanafeld.com.

¹ Owners who completed an inspection that complies with the new Health and Safety Code § 17973 between January 1, 2016 and January 1, 2019 will be permitted to use that inspection as the initial inspection.