

Date of Hearing: March 20, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Christopher M. Ward, Chair

AB 2114 (Irwin) – As Introduced February 5, 2024

SUBJECT: Building standards: exterior elevated elements: inspection

SUMMARY: Adds licensed civil engineers to the types of inspectors eligible to perform visual inspections of exterior elevated elements for which a homeowners association (HOA) has maintenance or repair responsibility. Includes an urgency clause.

EXISTING LAW:

- 1) Establishes the Davis-Stirling Common Interest Development (CID) Act, which provides rules and regulations governing the operation of residential CIDs and the rights and responsibilities of HOAs and HOA members. (Civil Code (CC) Section 4000 *et seq.*)
- 2) At least once every nine years, requires a HOA board of a condominium project with buildings containing three or more multifamily units to cause a reasonably competent and diligent visual inspection to be conducted by a licensed structural engineer or architect of a random and statistically significant sample of exterior elevated elements for which the HOA has maintenance or repair responsibility. (CC 5551(b)(1) and (l))
- 3) Requires the inspection to determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards. (CC 5551(b)(2))
- 4) Requires the inspector, prior to conducting the first visual inspection, to generate a random list of the locations of each type of exterior elevated element, which must include all exterior elevated elements for which the HOA has maintenance or repair responsibility. (CC 5551(c))
- 5) Requires the inspector to perform the visual inspections in accordance with the random list described in 4), and if during the inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, creating the potential for damage to the load-bearing components, the inspector is authorized to conduct a further inspection exercising their best professional judgment in determining the necessity, scope, and breadth of further testing. (CC 5551(d))
- 6) Requires the inspector to issue a written report containing the following information:
 - a) The identification of the building components comprising the load-bearing components and associated waterproofing system;
 - b) The current physical condition of the load-bearing components and associated waterproofing system, including whether the condition presents an immediate threat to the health and safety of the residents;
 - c) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system; and

- d) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system. (CC 5551(e))
- 7) Requires the inspector to provide a copy of the report to the HOA immediately upon completion of the report, and to the local code enforcement agency within 15 days, if the inspector advises that an exterior elevated element poses an immediate threat to the safety of the occupants. Requires the HOA to take preventive measures immediately upon receiving the report, including preventing occupant access to the element until repairs have been inspected and approved by the local enforcement agency. (CC 5551(g))
- 8) Requires the first inspection to be completed by January 1, 2025, and every nine years thereafter in coordination with the reserve study inspection pursuant to existing law. (CC 5551(i))
- 9) Requires owners of all buildings containing three or more multifamily dwelling units to inspect exterior elevated elements that include load-bearing components. Requires the inspection to be performed by a licensed architect; licensed civil or structural engineer; a building contractor holding any or all of the “A,” “B,” or “C-5” license classifications issued by the Contractors’ State License Board, with a minimum of five years’ experience as a holder of the aforementioned classifications or licenses, in constructing multistory wood frame buildings; or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by a local jurisdiction. (Health and Safety Code Section 17973(a))

FISCAL EFFECT: None.

COMMENTS:

Author’s Statement: According to the author, “Balcony inspections are a crucial element of ensuring that the balconies people spend significant amounts of time on do not unexpectedly break, causing severe bodily injury and harm. Statute dictates that the deadline for balconies in Common Interest Developments to be inspected in January 1, 2025. Statute also dictates that only licensed structural engineers or architects can perform these inspections in Common Interest Developments. This requirement had led to a lack of availability for people who can perform the inspections.

AB 2114 will reduce this workforce shortage by adding civil engineers to the list of professions able to perform these balcony inspections. ”

Background on CIDs: CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In recent years CIDs have represented a growing share of California’s housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35 percent of the state’s total housing stock.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 *et seq.*) as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) that are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to

abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay in order to cover communal expenses, including maintenance obligations. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second municipal government, regulating many aspects of [the homeowners'] daily lives" (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836).

Balcony Collapse: In 2015, a wooden balcony collapsed at the Library Gardens apartment complex located in the City of Berkeley, near the University of California, Berkeley campus. The balcony collapse killed six young adults and injured seven others, and investigations later revealed the balcony had decayed wooden joists caused by wood dry rot left untreated because of poor building maintenance.

Ultimately, the Contractor's State License Board revoked the license of Segue Construction, Inc., the general contractor responsible for building the apartment complex where the collapse occurred, as it was alleged that the contractor company "willfully departed from or disregarded building plans or specifications, and willfully departed from accepted trade standards for good and workmanlike construction."

As a result of that collapse, the Legislature passed SB 465 (Hill), Chapter 372, Statutes of 2016, which, in addition to requiring additional oversight for contractors, also required the California Building Standards Commission (CBSC) to establish a working group to study the failure of exterior elevated elements. The bill directed the CBSC to submit a report to the Legislature containing findings and possible recommendations for statutory or other changes to the California Building Standards Code. In 2017, the CBSC approved emergency regulations to accelerate the adoption of higher construction standards.

In 2018, SB 721 (Hill), Chapter 445 established a requirement to perform regular inspections of exterior elevated elements of certain multi-unit residential buildings. The bill required building owners to have those elements and other load-bearing components and waterproofing elements inspected at least every six years by certain licensed persons, to determine that the exterior elevated elements and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous conditions. The bill also required any identified repairs to be made within a designated timeframe and provided penalties for building owners who do not complete the required repairs.

While SB 721 did not apply to CIDs, SB 326 (Hill), Chapter 207, Statutes of 2019 later established minimum inspection requirements for exterior elevated elements in CIDs with three or more multifamily units. The bill also prohibited a HOA's governing documents from limiting the ability of an HOA to bring construction defect litigation against the founder, developer, or builder of the HOA.

SB 721 laid out a list of inspectors who are eligible to perform the inspections: a licensed architect; licensed civil or structural engineer; a building contractor holding an “A,” “B,” or “C-5” license classification issued by the Contractors’ State License Board, with a minimum of five years’ experience in constructing multistory wood frame buildings; or an individual certified as a building inspector or building official from a recognized state, national, or international association, as determined by a local jurisdiction. By contrast, SB 326 only allowed a licensed structural engineer or architect to inspect load-bearing elements in CIDs.

This bill adds licensed civil engineers to the list of inspectors who are authorized to perform inspections of these elements in multiunit buildings located within a CID. Because the deadline for completing the first round of inspections of these elements is January 1, 2025, the bill has an urgency clause so that HOAs who still have yet to complete their inspections may take advantage of the expanded inspector list before the compliance deadline.

Arguments in Support: According to the Community Associations Institute’s California Legislative Action Committee, the bill’s sponsor, “In 2019, the Legislature approved SB 326 (Hill), establishing mandatory inspections for exterior elevated elements such as balconies in a common interest development (CID) by January 1, 2025. However, as the deadline for these inspections’ approaches, many CIDs are struggling to find licensed professionals willing to conduct the inspections. This is in part to the lack of availability, with inspections being limited to licensed structural engineers and architects. With the limited pool of eligible inspectors, the cost of hiring them has increased significantly. AB 2114 addresses this issue by adding civil engineer to the list of licensed professionals able to conduct these inspections. The bill also includes an urgency clause, ensuring that the provisions of the bill will come into effect before the deadline of January 1, 2025.”

Arguments in Opposition: None on file.

Related Legislation:

AB 1101 (Flora) of 2023 would have authorized a Branch 3 registered company licensed by the Structural Pest Control Board with a minimum of five years of experience to perform exterior elevated element inspections. This bill was held in the Assembly Appropriations Committee.

SB 1340 (Wilk) of 2020, as introduced, would have authorized a licensed structural pest control contractor to perform exterior elevated element inspections and would have eliminated the prohibition against the contractor performing the inspection from bidding on the repair work. This bill died pending a hearing in the Senate Housing Committee.

SB 607 (Min), Chapter 367, Statutes of 2021: Deleted a prohibition on repairs of exterior elevated elements being performed by a licensed contractor serving as the inspector of those elements.

SB 326 (Hill), Chapter 207, Statutes of 2019: Established minimum inspection requirements for exterior elevated elements in CIDs with three or more multifamily units and prohibited a homeowner association’s governing documents from limiting the ability of an HOA to bring construction defect litigation against the founder, developer, or builder of the HOA.

SB 721 (Hill), Chapter 445, Statutes of 2018: Established minimum inspection requirements for the exterior elevated elements, including balconies and decks, of buildings with three or more multifamily dwelling units, as specified.

SB 465 (Hill), Chapter 372, Statutes of 2016: In addition to requiring additional oversight for contractors, also required the CBSC to establish a working group to study the failure of exterior elevated elements and to submit a report to the Legislature containing findings and possible recommendations for statutory or other changes to the California Building Standards Code.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute's - California Legislative Action Committee (Sponsor)
Apartment Association of Greater Los Angeles
California Building Industry Association
California Rental Housing Association

Opposition

None on file.

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