

CHAPMAN GLUCKSMAN

CHAPMAN GLUCKSMAN DEAN ROEB & BARGER

IMPORTANT ALERT: **NEW CALIFORNIA “CONSTRUCTION” LEGISLATION**

RICHARD H. GLUCKSMAN, ESQ.
CHELSEA L. ZWART, ESQ.

Governor Jerry Brown signed two potentially impactful Senate Bills relating to the construction of apartment buildings late last month. These Bills, discussed further below, were introduced, in part, in response to the Berkeley balcony collapse in June 2015, which was determined by the California Contractors State License Board to be caused by the failure of severely rotted structural support joists the repair of which were deferred by the property manager, despite indications of water damage.

SENATE BILL 721 ESTABLISHES HEIGHTENED “LOAD-BEARING” INSPECTION REQUIREMENTS

On August 21, 2018, the California State Senate passed SB 721, one of two bills by Senator Jerry Hill introduced this year seeking to address the safety of multifamily rental residences. Now that the Governor has signed the Bill, a new section will be added to the California *Health and Safety Code*, requiring that every 6 years, destructive testing be performed on at least 15% of each type of load-bearing, wood framed exterior elevated element (such as balconies, walkways, and stair landings) in apartment buildings with 3 or more units. Interestingly, prior to being passed by the State Senate, SB 721 was revised in June 2018, such that the inspection requirements do not apply to common interest developments (i.e., condominiums).

As set forth in the new [Health and Safety Code Section 17973](#):

“The purpose of the inspection is to determine that exterior elevated elements and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous condition caused by fungus, deterioration, decay, or improper alteration to the extent that the life, limb, health, property, safety, or welfare of the public or the occupants is not endangered.”

The inspection must be paid for by the building owner and performed 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. Emergency repairs identified by the inspector 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. If repairs are not completed within 180 days, civil penalties of \$100-\$500 per day may be imposed.

The required inspection must be completed by January 1, 2025 and every 6 years thereafter, unless an equivalent inspection was performed during the 3 years prior to January 1, 2019, the effective date of the new law. For a building converted to condominiums that will be sold after January 1, 2019, the inspection required by *Health and Safety Code* Section 17973, must be performed prior to the first close of escrow.

SENATE BILL 1465 SETS CONTRACTOR REPORTING REQUIREMENTS

The Governor also signed SB 1465, adding Sections [7071.20](#), [7071.21](#), and [7071.22](#) to the California *Business and Professions Code*. The new law requires that a contractor licensed with the Contractors' State License Board "report to the registrar in writing within 90 days after the licensee has knowledge of any civil action resulting in a final judgment, executed settlement agreement, or final arbitration award in which the licensee is named as a defendant or cross-defendant, filed on or after January 1, 2019," that meets certain and specific criteria, including that it is over \$1 million and arises out of an action for damages to a property or person allegedly caused by specified construction activities of the contractor on a multifamily rental residential structure.

Where more than one contractor was named as a defendant or cross-defendant, each of the contractors apportioned more than \$15,000 in liability must report the action. Importantly, the new statute also imposes similar reporting requirements on insurers of contractors. SB 1465 also addresses an impacted party's failure to comply with the reporting requirements.

COMMENT

Both SB 721 and SB 1465 are potentially significant and seek "legislative reform" to address construction issues by placing a greater burden on apartment owners as well as builders and subcontractors. How pragmatic and what impact they will have on the industry is obviously developing. If you are interested in receiving further detail concerning the Bills, please contact us. We are analyzing the new legislation and its intent and will be providing our ongoing comments.