

# **BAY AREA PROPERTY SERVICES ANNUAL SEMINAR**

## **SB721-WHAT IF, WHAT NOW & WHAT NEXT?**

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# SB721



# What If? What is SB721?

- **Requires** inspections of decks and related structures: **balconies, porches, stairways, walkways entry structures, supports and railings and any walking surface that is elevated more than six (6) feet above ground level.**
- Original legislation imposed obligations on apartment owners and common interest developments.
- Could have been financially devastating to community associations.
- Legislation that passed does not impose obligations on associations.

# What If?

## Inspections Shall Include, at a Minimum:

- (1) Identification of each building assembly exterior elevated element that, if found to be defective, decayed, or deteriorated to the extent that it does not meet its load requirements, would, in **the opinion of the inspector, constitute a threat to the health or safety of the occupants**.
- (2) **Assessment of the load-bearing components and associated waterproofing elements of the building assemblies by exterior elevated elements** using methods that allow for a direct **visual evaluation of the physical condition of the component**. *allowing for evaluation of their performance by direct visual examination or comparable means of evaluating their performance.* For purposes of this section, a sample of at least 15 percent of each type of building assembly exterior elevated element shall be inspected.

# What Now?

## Board Obligations Regardless of SB721

- Statutory Obligations
- Obligations under the governing documents
- Important California Case Law

# What Now?

## Existing Statutory Obligations

- Visual Inspections for Reserve Studies – Civil Code Section 5550
- Discharge of Duty to Repair Common Areas Requires Investigation of Reported Issues – Corporations Code Section 7231, Civil Code Section 4775
- Fiduciary duty to “conduct an investigation of the common interest development for latent deficiencies prior to the expiration of the applicable statute of limitations.” – *Civil Code Section 5800(f)*

# What Now?

## Obligations Under the Governing Documents

**7.7 Inspection of the Community.** The Association shall regularly inspect the Association Property and other Association Maintenance Areas, including without limitation, the landscaping, drainage and irrigation systems serving or within such areas. The Association shall also comply with the requirements, including the inspection requirements set forth in the Association Maintenance Manual or any Governmental Entitlements. **The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing such inspections and follow any recommendations contained in the Association Maintenance Manual.** The Association may, from time to time, make appropriate revisions to the Association Maintenance Manual, if any, based upon the Board's review of the Association Maintenance Manual, to update such Association Maintenance Manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. The inspections required to be conducted by the Association under this Article shall take place as required under the Association Maintenance Manual. The inspectors shall provide written reports of their inspections to the Association and, if requested by

# What Now?

## Obligations Under the Governing Documents

In furtherance of the Association's obligations described in this Section 5.1, the Board shall have the obligation to regularly and actively inspect, or cause to be inspected by a qualified professional, the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon (other than Exclusive Use Common Areas appurtenant to Owners' Units, as described in Section 5.2 below), to determine the need for repairs, replacements, restorations and maintenance in order to keep the Common Area and all facilities, improvements, furnishings, equipment, landscaping in good repair, working order, condition and appearance. The Board shall keep a written record and documentation of the results of such inspections. The Board shall promptly and without delay cause any necessary maintenance, repair, replacements or restorations to be performed by a qualified professional in a timely manner.



# What Now? Maintenance Manual Obligations



## Maintenance Suggestions

Inspect decking for cracks, soft spots or abnormal wear. Check condition of top coat for wear and UV exposure. Reapply top coat when color is lost or traffic wear is evident.

## Timetable

Residents need to clean the deck surface as often as necessary. Maintenance by the Association includes an annual inspection of the deck surfaces for damage or problems (recommended by the installing Contractor and the material manufacturer) and reapplication of the top coat every 2-3 years or as required.

## Potential Results of Deferred Maintenance

The waterproof deck coating protects anything below it from water intrusion. Normal wear and tear will require periodic replacement of the seal coat to protect the structural layers of the waterproofing system. Abnormal wear (from heavy objects, trapped moisture, etc.) can create an immediate need for repair and/or replacement. Water intrusion will create additional problems and expense through collateral damage to the building structure and finished wall surfaces. Owners will be responsible for damage caused by abuse or negligence.

# What Now? Maintenance Manual Obligations



## Maintenance Suggestions

The caulking around all the windows needs to be inspected for waterproof condition. Inspect all caulking. Repair or replace damaged caulking and paint new caulking as needed. Inspect also for any cleaning needs. Follow recommendations on next page for maintenance and cleaning.

## Timetable

Inspect exterior of windows at least annually. Repair or replace caulking and/or paint as needed. Follow guidelines on next page for cleaning methods and frequency.

## Potential Results of Deferred Maintenance

The waterproof condition of the caulking around the windows must be maintained by and is the maintenance responsibility of the Association. Leaking windows will cause water intrusion issues and can cause water damage to the interior of the residence and to the structure of the building. Failure to maintain the vinyl windows will lead to surface finish problems (chalking, bleaching, etc.).

Stucco  
Enclosed  
Deck  
Supports  
(Before &  
After Test)





Stucco  
Enclosed  
Deck  
(Before &  
After Test)



# What Now?

## Some Relevant Case Law

- *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal 3d 490

“... traditional tort principles impose on landlords, no less than on homeowner associations that function as a landlord in maintaining the common areas of a large condominium complex, a duty to exercise due care for the residents' safety in those areas under their control.”

# What Now?

## Some Relevant Case Law

- *Alpert v. Villa Romano Homeowners Assn.* (2000) 81 Cal.App.4th 1320

"This duty to maintain land in one's possession in a reasonably safe condition exists even where the dangerous condition on the land is caused by an instrumentality that the landowner does not own or control."

"The proper test to be applied to the liability of the possessor of land ... is whether in the management of his property [the possessor] has acted as a reasonable man in view of the probability of injury to others ...."

# What Next?

## The Debate is Not Over & Local Ordinances

- *The Elimination of Community Developments from SB721 is likely not the end of the discussion. Keep your eyes open for future state legislation.*
- *City Ordinances may already impact your community.*
- *Berkeley Example - [Section 601.4 to the Berkeley Housing Code](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/FAQs%20E3(1).pdf)*  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Housing\\_Code\\_Enforcement/FAQs%20E3\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Housing_Code_Enforcement/FAQs%20E3(1).pdf)

Enclosed  
Deck  
(Before &  
After Test)





# CONCLUSION:

SB721 could have been a devastating financial blow to communities throughout California.

However, although currently inapplicable, its terms should serve as a reminder to all boards and managers of their existing duties to members and residents.



thank you!