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Around the State

A Roundup of Residential Construction Legislation That Will Impact the Industry Going Forward

By Richard Glucksman and Chelsea Zwart

In late 2018, Governor Jerry Brown signed two potentially impactful Senate bills relating to the construction of apartment buildings. 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 have been caused by the failure of severely rotted structural support joists—the repairs of which were deferred by the property manager despite indications of water damage.

In addition, 2018 saw the passage of California's updated 2019 Building Energy Efficiency Standards. The new standards, which take effect in 2020, require, in part, the installation of solar systems on certain homes. The goal of the standards



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is to significantly decrease the energy usage in new homes while contributing to California's greenhouse gas emissions reduction plans. Relatedly, new legislation, effective in 2019, aims to increase consumer protections for homeowners purchasing solar energy systems.

Heightened "Load Bearing" Inspection Requirements

When we last visited SB 721 in the Fall 2018 issue of *Construction Claims*, the bill had been passed by the legislature as we went to press and was expected to be signed by Gov. Jerry Brown. On Sept. 17, Brown signed the bill, adding a new section to the California Health and Safety Code, effective Jan. 1, 2019, requiring that, every six years, destructive testing be performed on at least 15 percent of each type of load-bearing, wood framed exterior elevated element (such as balconies, walkways, and stair landings) in apartment buildings with three or more units.

SB 721 is one of two bills introduced by Sen. Jerry Hill, D-San Mateo, in 2018 that sought to address the safety of multifamily rental residences. Prior to

being passed by the State Senate, SB 721 was revised in June 2018 so that the new inspection requirements would not apply to common interest developments (i.e., condominiums).

As set forth in the new California Health and Safety Code § 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 Jan. 1, 2025 and every six years thereafter, unless an equivalent inspection was performed during the three years prior to Jan. 1, 2019. For a building converted to condominiums that will be sold after Jan. 1, 2019, the inspection required by California Health and Safety Code § 17973 must be performed prior to the first close of escrow.

New 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, also effective Jan. 1, 2019, 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" Jan. 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.

When more than one contractor is 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.

Revisions to Energy Efficiency Standards

The California Building Standards Code (California Code of Regulations, Title 24) serves as the basis for the design and construction of buildings in California. The Building Energy Efficiency Standards, a portion of the Building

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Standard's Code (California Code of Regulations, Title 24, Part 6), is updated every three years and seeks to reduce energy use and associated emissions of greenhouse gases.

The new 2019 Building Energy Efficiency Standards, which become effective Jan. 1, 2020, address energy efficiency of both residential and commercial buildings. California's energy-efficiency goal calls for all new residential buildings to be zero net energy by 2020. In furtherance of this goal, the new standards require that all new residential buildings under three stories, including single-family and multi-family residences, be equipped with solar panels. This is the first law of its kind in the nation.

The solar system to be installed will be dictated by climate zone and the floor area of the home, such that the size of the system nets out the annual kilowatt-hour energy usage of the residence. The 2019 standards also require more efficient insulation in building walls, windows, and attics to improve energy savings, and incentivize the installation of battery storage and heat pump water heaters to lessen demands on the power grid.

Exemptions from the solar panel requirement may be obtained if the building's roof is deemed unsuitable for solar or if extenuating circumstances prevent installation. Residences permitted before 2020 are not required to include solar panel systems, even if they are built in 2020. The 2019 standards will become the new "minimum" requirements, as local governments are permitted to implement more stringent requirements under the code.

Though not applicable to solar systems included in new residential

construction, newly enacted California Business & Professions Code § 7169, effective Jan. 1 2019, mandates that a disclosure document must be printed on the front page or cover page of every solar energy contract for the installation of a solar energy system on a residential building and provided to the consumer prior to the sale of the services. Section 7169 expressly provides the language that must be included in the disclosure. The aim of the statute is to increase protections for homeowner consumers.

Finally, pursuant to California Business & Professions Code § 7170 (also enacted in 2018), effective July 1, 2019, the California Contractors State License Board must provide annual reports of consumer complaints relating to solar contractors. The reports must include the type, location, and disposition of each complaint.

Both SB 721 and SB 1465 are significant, and are attempts by the state legislature to address construction issues by placing a greater burden on apartment owners as well as builders and subcontractors. Clearly, the new solar system requirements will also impact residential construction and may potentially bring with it unique issues that will develop as the plan is rolled out. How pragmatic these new laws are, and what impact they will have on the industry, is obviously developing. ■

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