



SB 326 Guidance Packet

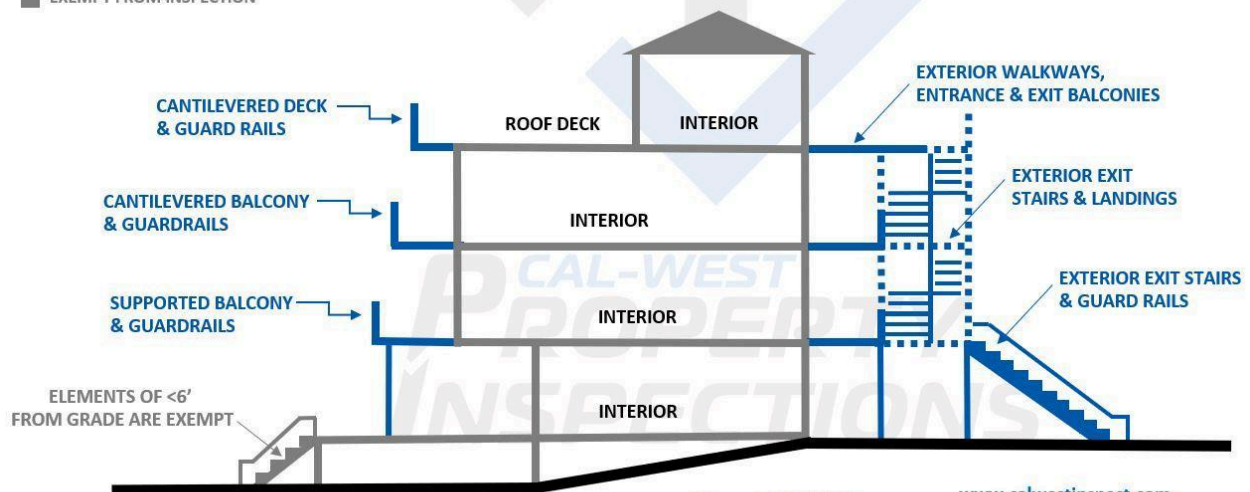


EEE Identification Infographic

ALL EXTERIOR ELEVATED ELEMENTS, OF WOOD-FRAMED AND STEEL-FRAMED CONSTRUCTION SHOWN IN BLUE ARE SUBJECT TO THE REQUIREMENTS OF SENATE BILLS SB-721 & SB-326

INFOGRAPHIC KEY

- EEE TO BE INSPECTED
- EXEMPT FROM INSPECTION



SB326 Highlights

1. **Compliance Date** – Jan 1, 2025 and every 9 years for future inspections.
2. **What buildings are affected?** Buildings with 3 or more units and that contain 1 or more EEE (Exterior Elevated Elements).
3. **What is an EEE?** An EEE is an Exterior Elevated Element. Defined in the bill text as: *“Exterior elevated element” means the following types of structures, including their supports and railings: balconies, decks, porches, stairways, walkways, and entry structures that extend beyond exterior walls of the building and which have a walking surface that is elevated more than six feet above ground level, are designed for human occupancy or use, and rely in whole or in substantial part on wood or wood-based products for structural support or stability of the exterior elevated element.*
4. **Who can perform SB326 Inspections?** Structural Engineers and Architects.
5. **How many EEE need to be inspected?** At least 95%, but we are thinking local building departments and insurance companies may require a higher percentage, possibly up to 100%.
6. **How is an inspection performed?** Inspections are performed in different ways depending on the type of construction.
 - A) If structural components are all exposed then a simple visual inspection is possibly all that is required.
 - B) Borescope inspection - If the structural components are enclosed then drilling holes in between each joist and inspecting the structural components with a borescope may be required.
 - C) Vent installation – Installation of hinged or removable inspection vents. These are great for ease of future inspection and the vents’ ability to prevent accelerated wood rot due to water intrusion causing the prolonged presence of wood rot causing water vapor. Inspection vents should be viewed as an option for long-term preventative solutions to SB721. Most buildings will require semi-custom vent installation to be effective.
7. **What if I pass my SB326 inspection?** You are required by law to keep a copy of your signed and dated inspection for 2 inspection cycles. The county building department or your insurance provider may also request them in the future.
8. **Can I fail an Inspection?** **Yes!** And the building department could need to be notified. If there is a serious safety concern for the occupants due to structural damage of an EEE, the HOA is required to make emergency repairs immediately, and the inspector is required to submit the report to the local building department within 15 days of completing the inspection.
9. **What happens if I don’t make the needed repairs?** **Bill Text...** The bill would require the inspector to provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report, if, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants. The bill would require the association to take preventive measures immediately upon receiving the report, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency. The bill would authorize local enforcement agencies to recover enforcement costs associated with these requirements from the association. The



bill would authorize the association board to enact rules or bylaws imposing requirements greater than those imposed by these provisions.

10. Who can perform the repairs? Licensed Structural Engineers and Architects

Senate Bill No. 326

CHAPTER 207

An act to amend Section 6150 of, and to add Sections 5551 and 5986 to, the Civil Code, relating to civil law.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 326, Hill. Common interest developments.

The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law also sets forth the duties and responsibilities of the association and the owners of the separate interests with regard to maintenance and repair of common and exclusive use areas, as defined. Unless otherwise provided in the common interest development declaration, the association is generally responsible for maintaining, repairing, and replacing the common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest.

This bill would require the association of a condominium project to cause a reasonably competent and diligent visual inspection of exterior elevated elements, defined as the load-bearing components and associated waterproofing systems, as specified, to determine whether the exterior elevated elements are in a generally safe condition and performing in compliance with applicable standards. The bill would require the inspector to submit a report to the board of the association providing specified information, including the current physical condition and remaining useful life of the load-bearing components and associated waterproofing systems. The bill would require the inspector to provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report, if, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants. The bill would require the association to take preventive measures immediately upon receiving the report, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency. The bill would authorize local enforcement agencies to recover enforcement costs associated with these requirements from the association. The bill would authorize the association board to enact rules or bylaws imposing requirements greater than those imposed by these provisions.

The act provides that an association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with its members in specified matters, including enforcement of the governing documents.

The bill would provide that, subject to compliance with other specified provisions described below, and notwithstanding any provision to the contrary in the governing documents, a board has the authority to commence legal proceedings against a declarant, developer, or builder of a common interest development, except as specified. The bill would, with certain exceptions, prohibit an association's governing documents from limiting a board's authority to commence legal proceedings against a declarant, developer, or builder of a common interest development. The bill would make these provisions applicable to governing documents, irrespective of when they were recorded, and claims initiated before the effective date of this bill, except if those claims have been resolved through an executed settlement, a final arbitration decision, or a final judicial decision on the merits.

The act requires the board, prior to the filing of certain civil actions by the association against the declarant or developer, or within 30 days of filing the civil action if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, to provide members of the association a written notice specifying, among other things, that a meeting will take place to discuss problems that may lead to the filing of a civil action.

This bill would require that notice to inform members that the potential impacts of filing a civil action, including financial, to the association and its members will also be discussed.

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 5551 is added to the Civil Code, to read:

5551.

(a) For purposes of this section, the following definitions apply:

(1) "Associated waterproofing systems" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water.

(2) "Exterior elevated elements" mean the load-bearing components together with their associated waterproofing system.

(3) "Load-bearing components" means those components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products.

(4) "Statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

(5) "Visual inspection" means inspection through the least intrusive method necessary to inspect load-bearing components, including visual observation only or visual observation in conjunction with, for example, the use of moisture meters, borescopes, or infrared technology.

(b) (1) At least once every nine years, the board of an association of a condominium project shall 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 association has maintenance or repair responsibility.

(2) The inspection shall determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards.

(c) Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of exterior elevated element. The list shall include all exterior elevated elements for which the association has maintenance or repair responsibility. The list shall be provided to the association for future use.

(d) The inspector shall perform the visual inspections in accordance with the random list generated pursuant to subdivision (c). If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection.

(e) Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a written report containing the following information:

(1) The identification of the building components comprising the load-bearing components and associated waterproofing system.

(2) 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.

(3) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system.

(4) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system.

(f) The report issued pursuant to subdivision (e) shall be stamped or signed by the inspector, presented to the board, and incorporated into the study required by Section 5550.

(g) (1) If, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion.

of the report. Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency.

(2) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this section from the association.

(h) Each subsequent visual inspection conducted under this section shall commence with the next exterior elevated element identified on the random list and shall proceed in order through the list.

(i) The first inspection shall be completed by January 1, 2025, and then every nine years thereafter in coordination with the reserve study inspection pursuant to Section 5550. All written reports shall be maintained for two inspection cycles as records of the association.

(j) (1) The association shall be responsible for complying with the requirements of this section.

(2) The continued and ongoing maintenance and repair of the load-bearing components and associated waterproofing systems in a safe, functional, and sanitary condition shall be the responsibility of the association as required by the association's governing documents.

(k) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2020, shall occur no later than six years following the issuance of a certificate of occupancy. The inspection shall otherwise comply with the provisions of this section.

(l) This section shall only apply to buildings containing three or more multifamily dwelling units.

(m) The association board may enact rules or bylaws imposing requirements greater than those imposed by this section.

(n) A local government or local enforcement agency may enact an ordinance or other rule imposing requirements greater than those imposed by this section.

SEC. 2.

Section 5986 is added to the Civil Code, immediately following Section 5985, to read:

5986.

(a) Subject to compliance with Section 6150, which requires the board to provide notice of a meeting with the members to discuss, among other things, problems that may lead to the filing of a civil action, before the board files a civil action against a declarant or other developer, or within 30 days after it files the action, if the association has reason to believe that the applicable statute of limitations will expire, and notwithstanding any provision to the contrary in the governing documents, the board shall have the authority to commence and pursue a claim, civil action, arbitration, prelitigation process pursuant to Section 6000 or Title 7 (commencing with Section 895) of Part 2 of Division 2, or other legal proceeding against a declarant, developer, or builder of a common interest development. If the board includes members appointed by, or affiliated with, the declarant, developer, or builder, the decision and authority to commence and pursue legal proceedings shall be vested solely in the nonaffiliated board members.

(b) The governing documents shall not impose any preconditions or limitations on the board's authority to commence and pursue any claim, civil action, arbitration, prelitigation process pursuant to Section 6000 or Title 7 (commencing with Section 895) of Part 2 of Division 2, or other legal proceeding against a declarant, developer, or builder of a common interest



development. Any limitation or precondition, including, but not limited to, requiring a membership vote as a prerequisite to, or otherwise providing the declarant, developer, or builder with veto authority over, the board's commencement and pursuit of a claim, civil action, arbitration, prelitigation process, or legal proceeding against the declarant, developer, or builder, or any incidental decision of the board, including, but not limited to, retaining legal counsel or incurring costs or expenses, is unenforceable, null, and void. The failure to comply with those limitations or preconditions, if only, shall not be asserted as a defense to any claim or action described in this section.

(c) Notwithstanding subdivision (a) or (b), any provision in the governing documents imposing limitations or preconditions on the board's authority to commence and pursue claims shall be valid and enforceable if the provision is adopted solely by the nondeclarant affiliated members of the association and the provision is adopted in accordance with the requirements necessary to amend the governing documents of the association.

(d) This section applies to all governing documents, whether recorded before or after the effective date of this section, and applies retroactively to claims initiated before the effective date of this section, except if those claims have been resolved through an executed settlement, a final arbitration decision, or a final judicial decision on the merits.

(e) Nothing in this section extends any applicable statute of limitation or repose to file or initiate any claim, civil action, arbitration, prelitigation process, or other legal proceeding. Nothing in this section shall affect any other obligations of an association contained in Title 7 (commencing with Section 895) of Part 2 of Division 2, or any other provision in the covenants, conditions, and restrictions of the association related to arbitration or other alternative dispute resolution procedures.

SEC. 3.

Section 6150 of the Civil Code is amended to read:

6150.

(a) Not later than 30 days before filing of any civil action by the association against the declarant or other developer of a common interest development for alleged damage to the common areas, alleged damage to the separate interests that the association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board shall provide a written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:

(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action, in addition to the potential impacts thereof to the association and its members, including any financial impacts.

(2) The options, including civil actions, that are available to address the problems.

(3) The time and place of the meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

Davis Stirling Civil Codes Related to SB326 Inspections

<https://www.davis-stirling.com/HOME/Statutes/Civil-Code-5550>

Civil Code § 5550. Reserve Study Requirements.

(a) At least once every three years, the board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

(b) The study required by this section shall at a minimum include:

- (1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.
- (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.
- (3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).
- (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.
- (5) A reserve funding plan that indicates how the association plans to fund the contribution

identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

Civil Code § 5551. Elevated Wooden Structure Inspections.

(a) For purposes of this section, the following definitions apply:

(1) "Associated waterproofing systems" include flashings, membranes, coatings, and sealants that protect the load-bearing components of exterior elevated elements from exposure to water.

(2) "Exterior elevated elements" mean the load-bearing components together with their associated waterproofing system.

(3) "Load-bearing components" means those components that extend beyond the exterior walls of the building to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, that are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products.

(4) "Statistically significant sample" means a sufficient number of units inspected to provide 95 percent confidence that the results from the sample are reflective of the whole, with a margin of error of no greater than plus or minus 5 percent.

(5) "Visual inspection" means inspection through the least intrusive method necessary to inspect load-bearing components, including visual observation only or visual observation in conjunction with, for example, the use of moisture meters, borescopes, or infrared technology.

(b)

(1) At least once every nine years, the board of an association of a condominium project shall 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 association has maintenance or repair responsibility.

(2) The inspection shall determine whether the exterior elevated elements are in a generally safe condition and performing in accordance with applicable standards.

- (c) Prior to conducting the first visual inspection, the inspector shall generate a random list of the locations of each type of exterior elevated element. The list shall include all exterior elevated elements for which the association has maintenance or repair responsibility. The list shall be provided to the association for future use.
- (d) The inspector shall perform the visual inspections in accordance with the random list generated pursuant to subdivision (c). If during the visual inspection the inspector observes building conditions indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, then the inspector may conduct a further inspection. The inspector shall exercise their best professional judgment in determining the necessity, scope, and breadth of any further inspection.
- (e) Based upon the inspector's visual inspections, further inspection, and construction and materials expertise, the inspector shall issue a written report containing the following information:
- (1) The identification of the building components comprising the load-bearing components and associated waterproofing system.
 - (2) 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.
 - (3) The expected future performance and remaining useful life of the load-bearing components and associated waterproofing system.
 - (4) Recommendations for any necessary repair or replacement of the load-bearing components and associated waterproofing system.
- (f) The report issued pursuant to subdivision (e) shall be stamped or signed by the inspector, presented to the board, and incorporated into the study required by Section 5550.
- (g)
- (1) If, after inspection of any exterior elevated element, the inspector advises that the exterior elevated element poses an immediate threat to the safety of the occupants, the inspector shall provide a copy of the inspection report to the association immediately upon completion of the report, and to the local code enforcement agency within 15 days of completion of the report. Upon receiving the report, the association shall take preventive measures immediately, including preventing occupant access to the exterior elevated element until repairs have been inspected and approved by the local enforcement agency.
 - (2) Local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this section from the association.
- (h) Each subsequent visual inspection conducted under this section shall commence with the next exterior elevated element identified on the random list and shall proceed in order through the list.
- (i) The first inspection shall be completed by January 1, 2025, and then every nine years thereafter in coordination with the reserve study inspection pursuant to Section 5550. All written reports shall be maintained for two inspection cycles as records of the association.
- (j)
- (1) The association shall be responsible for complying with the requirements of this section.
 - (2) The continued and ongoing maintenance and repair of the load-bearing components and associated waterproofing systems in a safe, functional, and sanitary condition shall be the responsibility of the association as required by the association's governing documents.
- (k) The inspection of buildings for which a building permit application has been submitted on or after January 1, 2020, shall occur no later than six years following the issuance of a certificate of occupancy. The inspection shall otherwise comply with the provisions of this section.
- (l) This section shall only apply to buildings containing three or more multifamily dwelling units.



(m) The association board may enact rules or bylaws imposing requirements greater than those imposed by this section.

(n) A local government or local enforcement agency may enact an ordinance or other rule imposing requirements greater than those imposed by this section.

(Added by Stats.2019, Ch. 207, Sec. 1. Effective January 1, 2020.)

Civil Code § 5560. Reserve Funding Plan.

(a) The reserve funding plan required by [Section 5550](#) shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with [Section 4900](#)) of Chapter 6.

(c) If the board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in [Section 5605](#).

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

Civil Code § 5565. Summary of Association Reserves.

The summary of the association's reserves required by paragraph (2) of subdivision (b) of [Section 5300](#) shall be based on the most recent review or study conducted pursuant to [Section 5550](#), shall be based only on assets held in cash or cash equivalents, shall be printed in boldface type, and shall include all of the following:

- (a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
- (b) As of the end of the fiscal year for which the study is prepared:
 - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.
 - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
 - (3) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to paragraph (2). Instead of complying with the requirements set forth in this paragraph, an association that is obligated to issue a review of its financial statement pursuant to [Section 5305](#) may include in the review a statement containing all of the information required by this paragraph.



(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

Civil Code § 5600. Duty to Levy Assessments; Fees to Defray Costs.

(a) Except as provided in [Section 5605](#), the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this act.

(b) An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

Civil Code § 5610. Emergency Assessment Requirements.

[Section 5605](#) does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(a) An extraordinary expense required by an order of a court.

(b) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.



(c) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual budget report under [Section 5300](#). However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a [resolution](#) containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)

Civil Code § 5615. Notice of Assessment Increase.

The association shall provide individual notice pursuant to [Section 4040](#) to the members of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

(Added by Stats. 2012, Ch. 180, Sec. 2. Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)