



Civil Code 5551

The facts, the fiction, and everything in between on the mandatory “balcony” inspections facing California.



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Presented by:

DISCLAIMER



THIS PRESENTATION DOES NOT CONSTITUTE LEGAL ADVICE FOR YOUR COMMUNITY. PLEASE CONTACT YOUR COMMUNITY'S LEGAL COUNSEL FOR THE SPECIFIC APPLICATION OF THIS GENERAL INFORMATION TO YOUR COMMUNITY ASSOCIATION



Clarifying the requirements



AT LEAST EVERY NINE (9) YEARS, A CONDOMINIUM ASSOCIATION*, WITH THREE (3) OR MORE ATTACHED UNITS, THAT HAS MAINTENANCE OR REPLACEMENT RESPONSIBILITIES** OF ANY EXTERIOR ELEVATED ELEMENTS (EEE) THAT ARE SUPPORTED PARTIALLY OR FULLY BY WOOD, OR WOOD BASED MATERIALS, AND EXTEND BEYOND THE BUILDING'S EXTERIOR, AND ARE DESIGNED FOR HUMAN USE, MUST HAVE AN INSPECTION COMPLETED BY A LICENSED ARCHITECT OR A STRUCTURAL ENGINEER, AND RECEIVE A WRITTEN REPORT BY SAID ARCHITECT OR STRUCTURAL ENGINEER WITHIN THIRTY (30) DAYS OF COMPLETION OF THE INSPECTION WHICH WILL BE KEPT ON FILE BY CONDOMINIUM ASSOCIATION FOR TWO COMPLETE NINE (9) YEAR CYCLES.

Civil Code §5550 (b): what, why, & how!



RESERVE STUDY



(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.

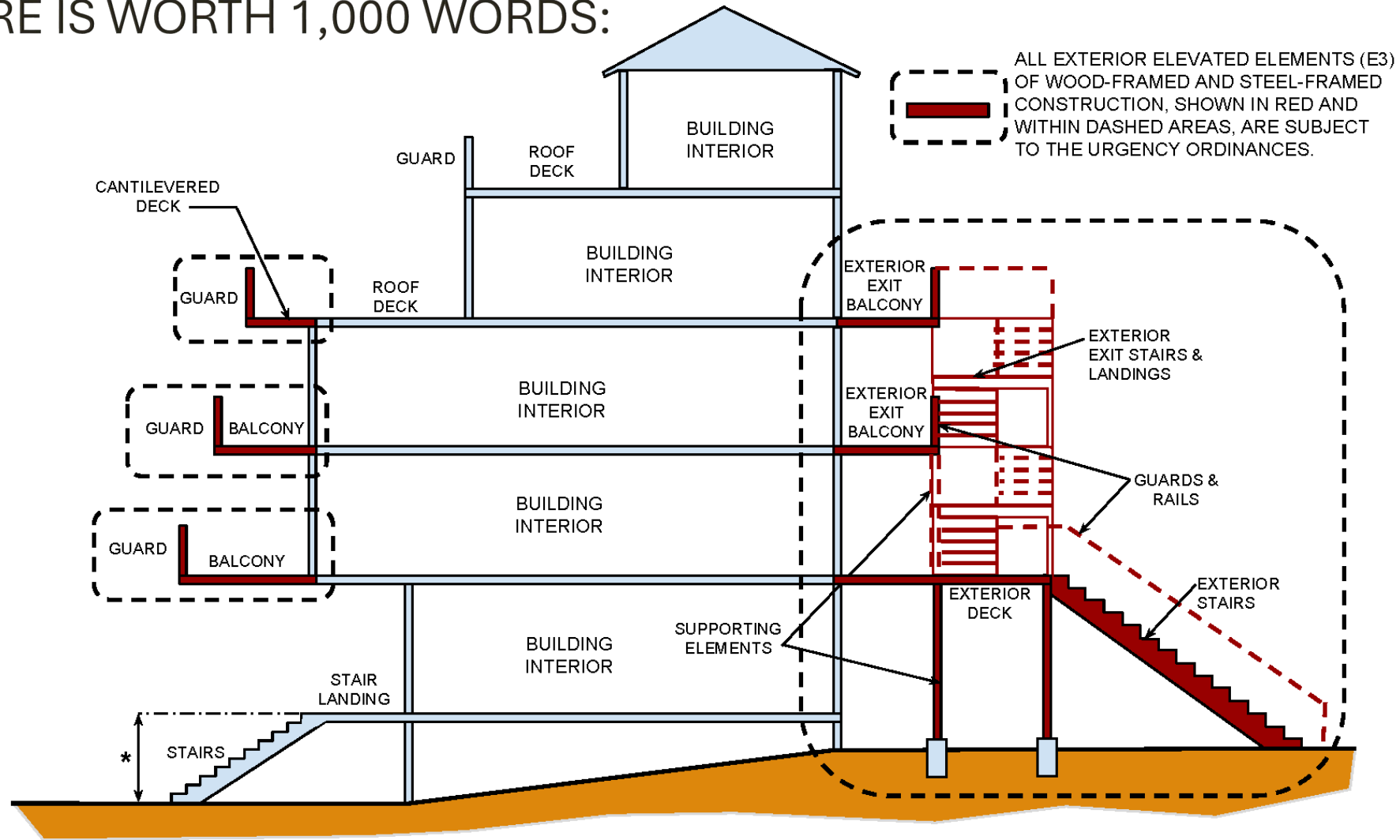
- (2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

- (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.

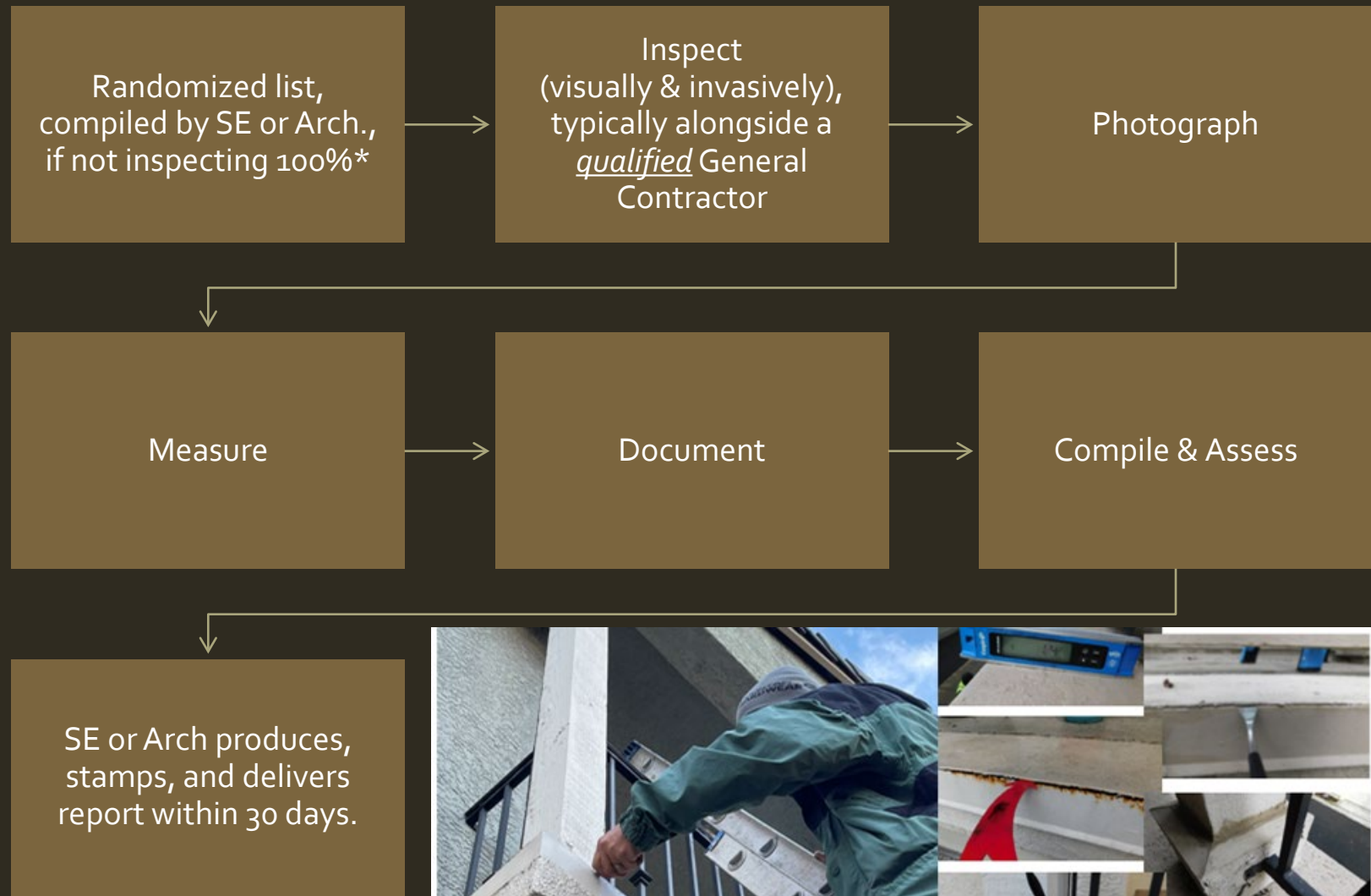
A PICTURE IS WORTH 1,000 WORDS:



* EXTERIOR ELEVATED ELEMENTS THAT ARE 72" OR LESS ABOVE GRADE ARE EXEMPT.



Defining The Process





What the law states:

CC 5551 Reports

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.

What the law intended:

- to have the qualified design professional (SE or Arch.) prepare the report as an independent party to eliminate potential conflicts of interest.
- to have all EEEs inspected in order to ensure resident safety, ascertain remaining useful life, and properly plan for necessary repairs.
- to provide a roadmap for necessary repairs.



CC 5551 Reports

Actuality of Reports:

Content varies drastically.

Intent of law is very different that what is produced.

Practical use of Reports:

Updating reserve study

Establishing a timeline for repair projects

Obtaining engineering/scope of repairs

Options for Pre-Reports:

Is this what the law intended or a loophole?

Should we consider this in the future?



Now, what do we do?



Funding ...

- Is Your House in Order?
- Or is Your Community
Independently Wealthy?

MORE TO COME!



Building a proper
Repair Scope

- General Contractor?
- Construction Manager?
- Engineer or Architect?

Obtaining Qualified
Proposals

- Are your bidders occupied housing specialists?
- Do they carry the proper insurance to work on HOAs?
- Do they have similar project references?

Selecting your
Contractor

- Bid comparison – price, time of production, insurance, warranties
- Interviews – state what is important to the community and ask the tough questions
 - Consider the following: contract exclusions, “defense, indemnity, and hold harmless provisions”, limitations of liability, shortened statutes of limitations, change order processes.

Contracts

- Check contractor’s license
- Check Secretary of State status
- Proof of Insurance (much more on that in a moment)

Building a Proper Repair Scope

Your Project Team

- Engineer or Architect
- General Contractor
- Construction Manager

Do You Need to Involve Your Lawyer?



Selecting Your Contractor

- Do You Need Occupied Housing Specialists?
- Interviews
- Bid Comparisons
- Price, time of production
- Warranties
- CSLB/SOS Active?
- Does Your Team Have Similar Project References?



Selecting Your Contractor

Why Would You?

- Defense, Indemnity and Hold Harmless Provisions
- Limitations of Liability
- Shortened Statutes of Limitation





Insurance Coverage & Additional Insured Endorsements

- Does the Association need more coverage than the contractor offers?
- Is the contractor asking that you obtain a WRAP policy?
- If you decline to purchase a WRAP policy, are you covered?



Insurance Coverage

- Do not assume that every contractor is insured under a standard commercial general liability policy and that you understand the coverage under the policy. Exclusions and Endorsements Exist!
- The industry is “additional insured” crazy. Additional insured allows you to make a first-party claim under the policy
- Cross-liability means that one insured party can sue another insured party when both parties are under the same policy.
- However, some policies may exclude certain situations—one company director suing another, for example, or lawsuits brought by a company against its directors.





NOW You Can Make the
Decision on Your Team



Funding Options!

- ✓ Bank Loans
- ✓ Special Assessment
- ✓ Reserves
- ✓ Emergency Special Assessment



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



Guidelines

*A response to the tragedy
of Champlain Towers*



FANNIE MAE AND FREDDIE MAC



Who is Fannie Mae and Freddie Mac?

Secondary lender whose goal is to be a reliable source of affordable mortgage financing

Provides a stable source of liquidity to support low- and moderate-income mortgage borrowers

Do not originate mortgage loans or lend to borrowers, rather packages and purchases loans from lenders

Owner > Lender Mortgages > FM² Purchases



Fannie Mae and Freddie Mac Addendums to Community Association Questionnaires

Lender expectation that the questionnaire can be completed by an individual who serves as a community association manager

No legal requirement that a community association manager has any construction experience whatsoever

Questionnaire seeks information regarding the physical condition of the property

Applies to multi-family residential condominium and cooperative developments with 5 or more units

Based on responses, a community may be placed on an “ineligible for lending” list



**How Can We Influence Change
Before the Next Inspection
Process?**

Q & A

The image features three-dimensional, white, hollow letters 'Q', '&', and 'A' arranged horizontally. They are set against a solid blue background with a subtle gradient. The letters are positioned on a light blue surface, casting soft shadows. The 'Q' is on the left, the '&' symbol is in the center, and the 'A' is on the right. The lighting is soft, highlighting the edges of the letters.

Thank you for your time!

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