

**Civil Code 5551 (SB 326) Application
Consensus among CA Reserve Study Providers, Jan 2020
(revised and updated Feb 3, 2020)**

Discussions occurred 12/5 (10 AM) or 12/10 (4 PM)

Note: session #2 was recorded, see [here](#)

Objective: to discuss this issue among statewide Reserve Study providers in order to provide a high level of service to the community associations of CA with a consistent application of CC 5551. Success will mean minimized confusion among associations, and a consistent set of expectations among clients, attorneys, and managers. This document contains no legal advice.

Civil Code text can be found [here](#)

Questions discussed were as follows:

Q1: Is the inspection to be funded through Reserves?

A: Any project funded through Reserves must pass all four part of the National Reserve Study Standards four part test (see [here](#)). Note that in the definition of Component on pg 3 it does not state that the Component needs to be a tangible repair or replacement project. This is further supported in the definition of "Replacement Cost" on pg 4 where it states that expenses are to include all related costs. Please see [here](#) for a new explanation and application of National Reserve Study Standards. Note that on pg 5 it states that a Component is an expense "typically associated with the common elements". There was a consensus that the inspection qualifies as a Reserve component.

Q2: What types of associations are affected?

A: California condominiums of three or more units, with balcony/deck/stair surfaces designed for human occupancy more than six feet above the ground, supported by beams, joists, columns or posts, that extend beyond the exterior walls of the building, and made of wood or wood-based products. A rooftop deck does not cause the association to come under 5551 authority (it does not project beyond the exterior walls of the building, and is not "fall-able". See photo appendix attached. When in doubt, seek clarification from the association's legal counsel.

Q3: When should we plan for the first expense of this UL=9 project?

A: The law goes into effect 1/1/2020. Associations affected must have had their first inspection before 1/1/2025 with the exception noted below for associations with a certificate occupancy after 1/1/2020. That means most

associations have five years to get their first inspection done (2020, 2021, 2022, 2023, or 2024).

Use your own best judgment, but consider the following:

- Unless you observe an obvious problem requiring immediate attention, any plan that recommends the client get their inspection done before the 1/1/2025 deadline should be very defensible (it does not need to be “immediate”). Creating a plan for the association that results in their compliance with the law should provide your firm a “safe harbor”.
- With-Site-Visit updates in 2020 may not allow for enough lead time to have the inspection done in time for the preparation of the Reserve Study. In those cases, it may be best to incorporate into the 2023 With-Site-Visit update.
- Plans for inspections during 2024 may be unwise, as the few qualified inspectors may be “too busy” handling the crush of last-year workload.
- This leaves the “sweet spot” for the first inspection to occur in support of your every-three-yr With-Site-Visit updates scheduled for 2021, 2022, or 2023.

“Newer” associations, those with a certificate of occupancy (CO) after 1/1/2020 (see §5551(k)), have six years to have this type of inspection accomplished. So an association with a CO in Jun of 2021 has until May of 2027 to have their first inspection.

Q4: When should the inspection be done relative to a WSV Update?

A: Per §5551(f) and (i), inspection results are to be incorporated into the With-Site-Visit update. So the inspection needs to be completed in advance of the With-Site-Visit update. A reasonable estimate at this time is to anticipate the inspection needs to be done 6-12 months prior to the With-Site-Visit update. This means if you have a With-Site-Visit update scheduled for 2021, this may be one of the associations needing to get an inspection done in the second half of 2020.

Q5: Will we be doing these inspections?

A: §5551(b)(1) requires the inspection to be done only by a “licensed structural engineer or architect”. Such qualified individuals may be found among construction consulting, construction management, architecture firms, etc. See your CAI membership directory and do some local research. It will be rare that a Reserve Study firm will have in-house staff licensed to do these inspections.

Q6: Will findings/recommendations from the inspection be Reserve projects?

Expect there are four ways to pay for any resulting-recommended projects found in the inspection:

- 1) “Standard” Reserve projects, possibly already appearing in the Reserve Study (deck sealing or resurfacing, wood stairway replacement, periodic balcony structural or dry rot repairs, walkway or balcony drain line cleanouts, etc.)
- 2) Special Assessment (for non-Reserve projects – expenses not qualifying as a Reserve Project)
- 3) Loan (similar to above – expenses not qualifying as a Reserve project)
- 4) Construction Defect litigation/award (a path possible for “younger” associations)

Q7: What will these inspections cost?

A: We don't know, but 95% confidence (the standard to which these inspections are being held) about any inspection will not come cheap. 95% confidence comes by sampling (approximately) 30 locations or more. Think \$5000 minimum for small associations. Early thinking is that inspections for medium or larger associations may commonly be in the \$5000 - \$20,000 range. Another idea is that inspectors may charge “per item” (possibly \$500/balcony?). The point is that we don't know at this time, and estimates may need to be generous. Estimates may also need to be large enough to include a legal opinion to clarify for the association which areas (if any) fall under §5551 control.

Consider that the exception on cost may be for newer associations (under 10 yrs old). In some cases, the inspection may be generously sponsored by a law firm in the process of evaluating the association for existence of construction defects.

General Recommendations:

1) Invest time in 2020 speaking to potential inspection companies and inspectors (CAI, CACM, or ECHO events). Inspectors may be found from within construction consulting or architecture companies currently serving community associations, inspection companies supporting multi-family apartment inspections, etc. Find out who is entering this field, and get an idea of their costs. Use the opportunity to stress what would be most helpful to us as we incorporate their findings is a list of projects, their timing, and their costs.

2) These inspections support safety. We in the Reserve Study profession should support safety by embracing and applauding this new requirement. Becoming compliant will be a new/additional expense, but inspections will be early ways to detect and avoid costly common area deferred maintenance, identifying projects (hopefully) while they are still small. So in addition to safety, these inspections may actually provide net cost-savings for associations.

- 3) This entire subject points out the need for professional consulting services and inspections to augment Reserve Study services, services that are necessary to help a property successfully enter into “middle age” (and farther). Associations are not going to get to successful middle age (and farther) with Reserve Studies alone. Properties would benefit from these types of engineering or safety inspections that go beyond the scope of a Reserve Study site inspection, giving the board as much advanced notice as possible to projects that *may not be revealed* in a Reserve Study, and providing information that helps boards maintain the integrity of the building (which is the Board’s job... Protect, Maintain, Enhance the assets of the corporation).
- 4) Per §5551(b)(1), it is the board’s obligation to have the inspection performed. It is not our obligation. Our role is to facilitate (allocate Reserve funding for, in most cases) the inspection and incorporate its results.
- 5) This may be time to revisit the standard text in your Reserve Study, clearly stating that the Reserve Study is for budget purposes, it is not a safety inspection
- 6) For associations under 10 yrs old, it is recommended you suggest the board retain or coordinate the inspection through association counsel. This will protect results under the attorney-client privilege in order to not jeopardize a potential construction defect claim.

Photographic Appendix - Examples



5551 does not apply. This corner balcony does not extend beyond the exterior walls of the building.



5551 does not apply. The "faux" balcony outside/below the window is not a structural element designed for human occupancy. It is trim. The roof over the doorway is a roof, not a structural element designed for human occupancy.



5551 does not apply. The decorative element between buildings, over the driveway, is not meant to support humans.



5551 likely applies. While the balcony may not be (exactly) in excess of 6' above ground, we wouldn't want a loved one with a small child to be on it when it fell. Recommendation: be generous in your application of the 6' above ground standard.



5551 likely applies. While the side patios are not overhanging areas (fall-able), the presence of the two “balconies” over the driveway to the underground garage are true balconies, with a dangerous 6’ (or more) potential fall risk.



5551 likely applies. The stairwell area projects from the exterior wall of the building.



5551 likely applies. While the bulk of the balcony is within the exterior profile of the building, there is a projected portion and leaning against the railing is potentially hazardous.



5551 likely applies. While under the roof line, the balcony projects from the building exterior surface, is supported by a corner column, and is “fall-able”.



5551 likely applies. Balconies are supported by columns, and surfaces project from the exterior envelope of the building.



5551 likely applies. Marginally 6' above ground, but it presents potential danger/harm to anyone on it if it fell, or if they leaned against the railing.



5551 does not apply. No wood or wood-based balconies on this high-rise (although it may be wise to recommend a safety inspection).



5551 likely applies. Balconies on right (above driveway) project beyond exterior envelope of building and roof line, and are definitely fall-able. Balconies in left of photo clearly project far beyond exterior of building envelope.



5551 likely applies. Elevated walkway areas designed for humans supported by columns. Note that balconies on left side of photo appear to be within envelope of building, thus not fall-able.



5551 likely applies. While balconies outside sliding doors may be very shallow, they project from building envelope and thus are fall-able.



5551 likely applies. While under the roof line, this balcony projects from the building exterior surface and is supported by columns. Expect the rock on the column is just veneer over wood structure.



5551 does not apply (presuming this to be condo, and ignoring anything over front walkway entrance).

Ironwork below windows is just decorative trim, not a structural projection from the building exterior envelope designed to hold humans.