

that extend beyond the 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-based products for structural support or stability of the EEE.

- 5) Requires the inspection to include, at a minimum:
 - a) Identification of each type of EEE that constitute a threat to the health or safety of occupants.
 - b) Assessment of the load-bearing components and associated waterproofing elements of a sample of at least 15% of each type of EEE.
 - c) The current condition of the EEEs, expectations of future performance and projected service life, and recommendations of any further inspection necessary.
 - d) A written report of the evaluation that includes certain specified information and is stamped or signed by the inspector and presented to the building owner within 45 days.
- 6) Requires the initial inspection to be completed by January 1, 2026, with follow-up inspections every six years thereafter.
- 7) Requires the inspector to produce an initial report and, if requested by the owner, a final report indicating that any required repairs have been completed. The inspector must provide a copy of any report that recommends immediate repairs or finds severe safety issues to the building owner and the local enforcement agency within 15 days.
- 8) Requires the building owner to correct an EEE found by the inspector to be in need of repair or replacement. All repair and replacement work must follow certain prescribed timelines and be performed by a qualified and licensed contractor in compliance with the recommendations of a specified licensed professional, any applicable manufacturer's specifications, applicable building standards, and local jurisdictional requirements.

EEE inspection requirements for CIDs specifically:

- 9) Requires the HOA board of a CID with buildings containing three or more multifamily units to cause a reasonably competent and diligent visual inspection to be conducted of EEEs for which the HOA has maintenance or repair responsibility, as specified.

- 10) Requires the inspection to determine whether the EEEs are in a generally safe condition and performing in accordance with applicable standards.
- 11) Requires the first inspection to be completed by January 1, 2025, and every nine years thereafter in coordination with the HOA reserve study inspection pursuant to existing law.

Seller disclosure requirements for units in CIDs:

- 12) Requires the owner of a separate interest (housing unit) in a CID to provide the following documents to a prospective buyer prior, to transfer of title or the execution of a real property sales contract, as specified:
 - a) A copy of all governing documents for the HOA, or a written statement that the HOA is not incorporated, as specified.
 - b) If applicable, a statement that a restriction in the governing documents limiting the occupancy, residency, or use of a unit on the basis of age is only enforceable as specified.
 - c) A copy of the most recent HOA annual budget report and policy statements, as specified.
 - d) A written statement regarding the amount of the HOA's current regular and special assessments and fees, any unpaid assessments on the unit, and any unpaid fines or penalties on the unit, as specified.
 - e) A copy or summary of any notice previously sent to the seller setting forth any alleged violation of the governing documents that is unresolved, as specified.
 - f) A copy of the initial list of defects provided to each HOA member, unless the HOA and the builder subsequently enter into a settlement agreement or otherwise resolve the matter, as specified.
 - g) A copy of the latest information on construction defect litigation affecting the HOA, as specified.
 - h) Any change in the HOA's current regular and special assessments and fees approved by the board that have not yet become due and payable.
 - i) If applicable, a statement describing any prohibition on renting or leasing any individual units in the CID.
 - j) If requested by the buyer, a copy of the minutes of HOA board meetings conducted over the previous 12 months, as specified.
 - k) A copy of the most recent EEE inspection conducted of the CID.
- 13) Specifies the format and contents for the disclosure form given to the prospective buyer of a unit in a CID.

This bill:*Fiduciary Requirements*

- 1) Requires an agent that performs duties on behalf of an HOA to provide a fiduciary duty to the board of the HOA and to individual members of the HOA.

Seller disclosure requirements for units in CIDs

- 2) Expands the list of items that must be disclosed when an owner of a housing unit in a CID seeks to sell their property as follows:
 - a) Requires the HOA, at the request of an owner, or prospective purchaser, to disclose the following information identified in the most recent EEE inspection.
 - i) The number of EEEs and the number of units, requiring imminent repairs necessary to protect life.
 - ii) The number of EEEs, and the number of units, requiring isolated balcony issues that require preventative maintenance that does not constitute critical repairs or require immediate attention.
 - iii) Any balcony identified as needing more than \$10,000 in repairs.
 - b) Requires an HOA manager, to provide upon request of an owner, the following information requested by a prospective purchaser, or mortgage lender associated with an application to refinance, transfer, or sell the property:
 - i) A separate disclosure providing a uniform overview of the HOA or condominium complex in relation to the federal lending rule defining “critical repair.”
 - ii) Information on whether:
 - (1) The Codes, Covenants and Restrictions (CC&Rs) require a unit owner to maintain EEEs that they have the exclusive right to use (e.g., balconies).
 - (2) The HOA reserve study includes a minimum annual budgeted replacement reserve allocation of 10% for repairs of the exterior structures.
 - (3) HOA reserve study has been updated to include repairs identified in the in the statutorily required inspection of the EEEs for which the HOA has maintenance or repair responsibility.

Prohibition on use of reserves

- 3) Prohibits HOAS from transferring reserve funds, or expending reserve funds on litigation, legal services, or to threaten litigation involving any real property owner of record, or relative of the owner that is a member of the HOA.

Inspections

- 4) Narrows the focus of the triennial visual inspection that HOAs must conduct of all accessible major components from covering major components that the HOA is obligated to repair, replace, restore or maintain, to only cover items the HOA is obligated to repair, replace, restore, or maintain to ensure occupant safety.
- 5) Expands the list of items considered “major components” for the purposes of the triennial inspection to include waterproofing systems, EEEs, and load bearing components, as specified.
- 6) Revises and expands the information that an inspector must include in the statutorily required nine-year inspection of EEEs to include the total number of inspected EEEs identified in the inspector’s written report and the number of units impacted in each of the following repair urgency categories:
 - a) The total number of inspected EEEs identified as posing an immediate threat to the safety of the occupants and the number of units impacted.
 - b) EEEs requiring repair within 365 of the inspection.
 - c) EEEs requiring repair within one to four years.
 - d) EEEs demonstrating no need for repair at the time of inspection.
- 7) Requires the HOAs reserve funding plan to include repairs identified in the most recent EEE inspection.
- 8) Requires the summary of the HOAs reserves that is prepared as part of the annual budget report the HOAS must prepare to include repairs identified in the EEE inspection.

Background

CIDs and HOAs. CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobile home parks. In recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35% of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. CIDs can also have CC&Rs that are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many HOAs use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay to cover communal expenses, including maintenance obligations. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property.

Comments

- 1) *Author statement.* "SB 1238 will protect homeowners who reside in communities with a HOA by requiring additional disclosures to the homeowner and ensuring HOAs act in the homeowners' best interest by requiring a fiduciary duty be provided by HOA managers to the HOA board and the HOA members. Under current law HOA managers have no licensing requirements or duties to the homeowner. This bill will establish a minimum standard by requiring HOA managers to provide a fiduciary duty to the homeowner while also prohibiting HOAs from using HOA reserve funds to sue homeowners seeking to hold boards and managers accountable for property maintenance required under CA law."

- 2) *Balcony safety.* In 2015, a wooden balcony collapsed at the Library Gardens apartment complex in the City of Berkeley, near the University of California, Berkeley campus. The balcony collapse killed six young adults and injured seven others. Investigations later revealed that the balcony had decayed wooden joists caused by wood dry rot left untreated due to poor building maintenance.

Ultimately, the Contractor's State License Board revoked the license of Segue Construction, Inc., the general contractor responsible for building the apartment complex where the collapse occurred, as it was alleged that the contractor company "willfully departed from or disregarded building plans or specifications, and willfully departed from accepted trade standards for good and workmanlike construction."

As a result of that collapse, the Legislature passed SB 465 (Hill, Chapter 372, Statutes of 2016), which, in addition to requiring additional oversight for contractors, also required the California Building Standards Commission (CBSC) to establish a working group to study the failure of EEEs. The bill directed the CBSC to submit a report to the Legislature containing findings and possible recommendations for statutory or other changes to the California Building Standards Code. In 2017, the CBSC approved emergency regulations to accelerate the adoption of higher construction standards.

The following year, SB 721 (Hill, Chapter 445, Statutes of 2018) established a requirement to perform regular inspections of EEEs of certain multi-unit residential buildings. The bill required building owners to have those elements and other load-bearing components and waterproofing elements inspected at least every six years by certain licensed persons, to determine that the EEEs and their associated waterproofing elements are in a generally safe condition, adequate working order, and free from any hazardous conditions. It also required any identified repairs be made within a designated timeframe and provided penalties for building owners who do not complete the required repairs.

Notably, SB 721 specifically excluded CIDs from its provisions. In 2019, SB 326 (Hill, Chapter 207, Statutes of 2019) extended similar inspection requirements to CIDs. SB 326 requires HOA boards to arrange an inspection every nine years, as specified, of the CID's balconies over which the HOA has maintenance or repair responsibility. The inspector must provide a report for the board, which must be incorporated into the HOA's reserve study.

The deadline for the initial inspection under both SB 721 and SB 326 was January 1, 2025. However, recent legislation (AB 2579, Chapter 835, 2024) generally extended this deadline to January 1, 2026—but did not explicitly extend the deadline for CIDs.

- 3) *Ensuring accountability for inspections.* The original EEE inspection legislation included a mechanism for follow-up from any inspection that results in a finding that repairs are needed. If an inspector advises that the condition of an EEE poses an immediate threat to the safety of the occupants, the inspector must provide a copy of the inspection report to the local code enforcement agency and the building owner must immediately undertake preventive measures. For less urgent repairs, the law requires building owners to apply for a permit to make the repairs within 120 days and imposes fines on building owners who do not commence repairs in a timely fashion.

However, the legislation imposing EEE inspection requirements on CIDs did not include a follow-up mechanism and does not impose any consequences if an HOA does not take action in response to an inspection report that finds an EEE in need of repair. Instead, the law deems EEE inspections to be part of an HOA's ongoing maintenance responsibility.

- 4) *Seller disclosure requirements for units in CIDs.* Recent legislation, SB 410 (Grayson, Chapter 516, Statutes of 2015) expanded the seller disclosure requirements that a homeowner in an CID must provide to a prospective purchaser to include a copy of the most recent EEE inspection. This bill revises seller disclosure requirements to require a seller to disclose if any balcony in the EEE requires \$10,000 or more worth of repairs. This bill additionally requires HOAs that employ managers to, upon request of a seller or prospective purchaser, to identify specific information contained in the copy of the EEE inspection report the seller is already required to disclose. This bill additionally requires HOA managers, upon request of an owner, to identify where loan officers and prospective purchasers can find information in documents that the seller has already provided.

HOA managers have a contractual relationship with the HOA, and they serve the members of the HOA at the direction of the board, but they do not have a relationship with entities and individuals that are not members of the HOA. "Prospective purchaser" is not defined in this bill, meaning any individual could claim to be a prospective purchaser and request information directly from the HOA. Is it in the interest of HOA members to require an HOA manager to share HOA records with any individual claiming to be prospective purchaser?

The existing disclosure requirements avoid this issue by placing the disclosure requirements on the member of the HOA selling their property.

- 5) *Fiduciary Duties*. This bill proposes to require HOA managers to provide a fiduciary duty to the board of an HOA and its members. Existing case law establishes a fiduciary duty between the board of an HOA and the members of an HOA.¹ An HOA, in its contractual relationship with an HOA manager may also elect to require the manager serve as a fiduciary to the HOA. In a court opinion on the fiduciary duties that directors of HOAs hold to their members, courts opined that “this fiduciary relationship is governed by the statutory standard that requires directors to exercise due care and undivided loyalty for the interests of the corporation.”²

This bill seeks to require HOA managers to serve as a fiduciary to the board as well as the individual members of the HOA. It is unclear how an HOA manager can serve as a fiduciary to multiple parties that may have competing financial interests. The supporters argue that this should not be an issue because the financial interests of the board and the members should always be in alignment. It is certainly desirable that HOAs and their members will never have disagreements with financial implications, however given the number of individuals living in CIDs, disagreements are inevitable.

One example demonstrating the potential for divergent financial interest occurred in Carlsbad where a homeowner in a CID planned to convert the garage in his three-story condo into a Junior Accessory Dwelling Unit (JADU) that could be used for rental income. The homeowner was informed by the HOA manager that he could not convert his garage into a rental as it violated the CC&Rs of the CID. Ultimately this matter led to litigation that is ongoing. In legal filings the HOA argued that, in addition to violating the CC&Rs prohibition on adding a JADU, the construction involved in the garage conversion resulted in physical alterations to CID property. The case is currently pending in court with the HOA litigating to prevent the conversion from moving forward.³

The homeowner has a financial interest in completing the project and generating rental income. The HOA can argue that it has financial interest in

¹ *Frances T. v. Village Green Owners Association*, 42 Cal. 3d 490 (Cal. 1986)

² *Ibid.*

³ Ben Christopher, "No New ADUs Here: When California Law and Homeowner Association Rules Collide," *KPBS*, February 21, 2025, <https://www.kpbs.org/news/living/2025/02/21/no-new-adus-here-when-california-law-and-homeowner-association-rules-collide>.

preserving the CC&Rs on behalf of the other members, and a financial interest in limiting physical impacts to property of the CID. How can an HOA manager serve as a fiduciary with *undivided loyalty* to the homeowner and the HOA when the financial interest of the two parties is not aligned?

Ultimately, adding fiduciary duties establishes a legal threshold for any entity that is obliged to serve as a fiduciary. There are significant bodies of case law describing the specific obligations of a fiduciary. The sponsors of the bill recently indicated an openness to shifting the fiduciary duty to a standard of care that “is prudent and provides the highest good faith effort to provide material information” to homeowners pursuant to existing standards in law. This proposal was not presented to committee staff in time to fully consider this issue before the hearing.

This bill will also be heard in the Judiciary Committee where the legal implications of requiring an HOA manager to serve as a fiduciary, or to meet another standard of financial care, to an HOA, to a member, or both can be weighed more fully. *The Committee may wish to consider encouraging the author to continue to work with this committee, Judiciary Committee, and stakeholders, to resolve the issue before this bill is heard on the Senate Floor.*

6) ***Committee Amendments.*** **The committee may wish to consider amending the bill as follows:**

- a) Clarifying limits on HOA use of reserves. The bill seeks to ensure that HOA reserves are not expended on specific types of litigation that are not already authorized in existing law. Existing law authorizes the use of reserves for legal expenses related to the general preservation of major components that the HOA is obligated to maintain and hold reserves for. The current language in this bill could be read broadly to prohibit *any* type of litigation, including these lawful uses.

Revise the language to clarify that this bill does not limit HOAs from complying with its legal obligations to maintain property, including, if necessary, through litigation.

- b) Balcony inspections. Existing law requires HOAs to ensure that a competent and diligent visual inspection of major components that the HOA is responsible for, including EEEs every three years, and to ensure that a

statistically significant sample of EEEs are inspected by a licensed professional every nine years.

- i) Triennial inspections. The triennial inspection of major components requires HOAs to conduct a diligent visual inspection of the accessible major components that the HOA is responsible for. This bill would limit the scope of this inspection to only cover major components that are related to occupant safety. This change is intended to emphasize the importance of inspecting certain major components, but it invertedly narrows the scope of the inspection to exclude major components that are not directly related to occupant safety. This could exclude the inspection of areas of the HOA such as common room or shared event space that do not have a direct safety nexus but are still important to maintain.

Remove the provisions that limits the scope of the triennial inspection to only cover major components related to occupant safety.

- ii) Nine-year inspection. The inspection of EEEs that occurs every nine years is required to identify the number of inspected EEEs posing an immediate threat to occupant safety on the cover page of the inspection report. This bill expands the items that must be included on the cover page of the inspection report to include the following:

- (1) EEEs requiring repair within 365 days.
- (2) EEEs requiring repair in more than one year but fewer than four years.
- (3) EEEs demonstrating no need for repair.

The repair intervals required to be reported in the nine-year inspection should be linked to the triennial inspection to create a natural check-in point for any EEEs identified as needing potential repair.

Revise the EEE classifications in the nine-year inspection report as follows:

- (1) EEEs requiring immediate repair (revert to/maintain existing law)**
- (2) EEEs that should be visually inspected again in three years, or at the time of the next triennial inspection.**
- (3) EEEs that should be inspected again in the next nine-year inspection.**
- (4) EEEs that demonstrate no need for repair.**

- c) Seller Disclosures. As noted in comment 5) above, this bill creates new disclosure requirements related to a sale or transfer of a housing unit in a CID and places the new disclosure requirements direction on the HOA. It also requires HOAs to disclose certain records directly to prospective purchasers rather than to HOA members.

Revise the expanded disclosure requirements proposed to be added to list of seller disclosure requirements. Specifically, place the disclosure requirements on the seller (instead of the HOA as proposed in the bill) this will ensure continuity within that section. Additionally revise the requirements to ensure that expanded disclosure requirements are objective. This objectivity will facilitate compliance with the disclosure requirements and reduce the risk of delaying or cancelling a sale or transfer or property.

- 7) *Support*. The California Association of Realtors is the sponsor of the bill and argues that SB 1238 will protect homeowners, clarify that reserves cannot be used to protect bad actor HOA management companies, and require HOA managers to provide a disclosure about the financial and physical health of the HOA to the homeowners.
- 8) *Double referral*. This bill was also referred to the Judiciary Committee.

Related/Prior Legislation

SB 410 (Grayson, Chapter 516, Statutes of 2015) – requires the owner of a housing unit to provide a copy of the report issued from the most recent inspection of EEEs in a CID to a prospective purchaser of the housing unit, requires inspection reports to contain specified information, and requires HOAs to preserve inspection reports as HOA records.

AB 2579 (Quirk-Silva, Chapter 835, Statutes of 2024) – extends the deadline by one year, to January 1, 2026, for performing inspections of EEEs in all buildings containing three or more multifamily dwelling units.

AB 2114 (Irwin, Chapter 100, Statutes of 2024) – adds licensed civil engineers to the types of inspectors eligible to perform visual inspections of EEEs for which an HOA has maintenance or repair responsibility.

SB 326 (Hill, Chapter 207, Statutes of 2019) – establishes minimum inspection requirements for EEEs within HOAs.

SB 721 (Hill, Chapter 445, Statutes of 2018) established minimum inspection requirements for the EEEs, including balconies and decks, of buildings with three or more multifamily dwelling units, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, April 8th, 2026.)

SUPPORT:

California Association of Realtors (Sponsor)
Center for Homeowner Association Law

OPPOSITION:

None received.

-- END --