



Lindborg & Mazor LLP

# NEWSLETTER

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## 2026 USHERS IN MAJOR CHANGES IN LAWS GOVERNING CA CONTRACTORS AND REAL ESTATE DEVELOPERS

Every year, the California legislature enacts dozens of laws affecting contractors and real estate developers. As discussed below, this year is particularly notable, for it ushers in a number of statutory revisions and additions which are broad in scope and reach.

### **The Legislature Makes Changes to Retention and Change Order Procedures On Large Private Projects**

The following are new additions to the Civil Code governing the amount of retention which may be held, as well as the change order process on all private non-residential and mixed-use residential projects over four (4) stories. Note that the parties may not contractually waive these statutory changes.

- New Civil Code § 8811 caps retention at five percent (5%) on any contract entered into after Jan. 1, 2026 relating to these types of projects. Flow-down contracts may not exceed the retention percentage stipulated in the prime contract unless a subcontractor fails to furnish payment and performance bonds requested at the time of bidding. The section also contains an attorneys' fees provision, thus giving some teeth to its mandatory nature

## The Legislature's Changes to Home Improvement Contracts

- New Civil Code §§ 8850 et seq. establish a 5-step change order process with mandatory timelines. Note that this is somewhat experimental because, unless renewed, the law expires at the end of 2029. Until that time, however, all parties who enter into contracts after Jan. 1, 2026 on these types of projects must comply with the following process:
  - A contractor must submit all claims to the owner by registered or certified mail with return receipt requested
  - The owner must respond to a submitted claim within 30 days and, in doing so, must identify the disputed and undisputed portions of the claim
  - The owner must issue payment for the undisputed portions of the claim within 60 days of the written response. If it fails to do so, interest shall accrue at the rate of two percent (2%) per month
  - The parties must attempt to resolve the disputed portions of a claim through an informal conference, followed by mediation, and then litigation/arbitration. The parties may proceed directly to litigation/arbitration should they mutually agree to waive the informal conference and mediation
  - A contractor may issue a stop-work notice and suspend work after 40 days "without penalty" if the owner fails to comply with the statutory timelines
  - Contracts may include additional, "reasonable change order, claim, and dispute resolution procedures" as long as these do not conflict with or impair statutory procedures and timeframes
  - A contractor must present a subcontractor's claim to the owner and inform the subcontractor of doing so within 30 days or explain why the subcontractor's claim was not presented. A subcontractor has the right to approve any settlement of its claim in writing.

Contractors who perform work on existing residential structures must modify their agreements as follows:

- The name and address of any contractor who provides more than 50% of the cost of the work must be disclosed
- The use of subcontractors on projects of this type must be disclosed with the relevant contract stating that, "one or more subcontractors will be used on this project, and the contractor is aware that a list of subcontractors is required to be provided, upon request, along with the names, contact information, license number, and classification of those subcontractors."
- The contracts relative to these types of projects must state that owners may exercise their 3-day cancellation right via email, and provide owners with an email address and a telephone number to assist them with locating and filling out the cancellation forms.

## The Legislature Continues to Assert Statewide Control Over Local Zoning Codes

To further encourage the development of affordable housing, the Legislature added several new sections to the Government Code which override local zoning laws in eight (8) of the most populous counties of California (including Los Angeles, Orange and San Diego) to allow 55 to 75-feet-high residential developments within a half mile of heavy and light railway stations and certain major bus stops.

Note that these statutes do not take effect until July 1, 2026. The City of Los Angeles has already announced its intention to challenge their validity.

## The Legislature Updates Balcony Inspection Laws

California Legislature has now decreed that not only must sellers of condominium units inspect the exterior elevated elements ("EEE") in their complexes but that they must include in their disclosures to buyers the results of the report concerning the EEE, as required by Civil Code § 5551.

The Legislature has further provided that the first page of those reports must relay certain information regarding the number of units and the number of EEE contained in the relevant complexes, and inform of the EEE judged to pose an immediate threat to the safety of the residents of the complexes. Specifically, effective Jan. 1, 2026, Civil Code § 5551 (the HOA statute) has been amended to provide that the first page of the inspection report contain the following information:

- The date of inspection.
- The total number of units in the condominium complex
- The total number of units in the condominium complex with EEE
- The total number of EEE in the condominium complex
- The total number of EEE inspected pursuant to the statute
- The total number of inspected EEE identified as posing an immediate threat to the safety of the occupants and the number of units impacted
- A certification that the inspector conducted a visual inspection and evaluated a statistically significant sample of the EEE within the condominium complex, as required by statute

All EEE inspectors should update their reports accordingly.

Note that the California Legislature did not make an analogous amendment to Health & Safety Code §17973 (the apartment statute).