

Reprinted in part from
Volume 25, Number 2, November 2014
(Article starting on page 87 in the actual issue)

ARTICLE**ALL SHOOK UP: CALIFORNIA'S FRAGMENTED
EARTHQUAKE SAFETY, SEISMIC SAFETY UPGRADE
AND SEISMIC HAZARD DISCLOSURE LAWS**

By Karl E. Geier*

INTRODUCTION

The recent Napa earthquake caused significant damage to buildings in the historic downtown areas of the cities of Napa and Vallejo, and brought to the fore the limited extent to which California law requires seismic safety upgrades to unreinforced masonry buildings and other structures that were built before current building code requirements became applicable. Unlike many earthquake related disasters in other countries, where collapses of recently built structures with great loss of life and property damage are often attributable to lax, outdated building codes, corruption of building inspectors, or other failures of current building regulations, in California the most severe earthquake damage usually occurs in older buildings constructed long before current structural and seismic safety code requirements were imposed. As outlined in this article, land use planning for new projects is required to take into account earthquake and seismic safety criteria, and the State's construction and building codes directly impose seismic safety techniques in the design and construction of new buildings and in

* Karl E. Geier is a shareholder in the firm of Miller Starr Regalia and Editor-In-Chief of the firm's treatise, *Miller & Starr, California Real Estate 3d*, published by Thomson Reuters.



substantial alterations and additions to those structures. As to other pre-existing structures, however, several laws enacted after major seismic events have appeared to address those issues, but for the most part leave to local agencies the determination of how, if at all, seismic retrofit or seismic upgrade requirements will apply to existing structures. Many jurisdictions have not imposed rigorous retrofit requirements on owners of existing buildings known to be seismically at risk.

I. Seismic Safety Requirements and Planning for New Projects Under the Alquist Priolo Act and the Seismic Hazards Mapping Act.

Overview of the statutes. The Alquist-Priolo Earthquake Fault Zoning Act¹ and the related Seismic Hazards Mapping Act² impose geotechnical and seismic mapping requirements for the approval of all new construction projects that are located in seismic hazard areas, and for the mapping and dissemination of information concerning such zones. The Alquist-Priolo Act requires the State Geologist to develop and compile maps delineating earthquake fault zones³ and includes requirements for project approval in accordance with policies and requirements of the State Mining and Geology Board.⁴ The Seismic Hazards Mapping Act provides for the mapping of other seismic hazard areas including those areas that may be affected by strong ground shaking, liquefaction, landslides, and other ground failure in the event of an earthquake, as well as the provision of such maps to cities and counties by the State Geologist for use in the planning, zoning, and project approval processes for such areas in the jurisdiction.⁵

Requirements for covered projects in earthquake fault zones. Prior to approval of any non-exempt project subject to the Alquist-Priolo earthquake fault zone requirements, the city or county must obtain a geologic report defining and delineating any hazard of surface fault rupture that affects the proposed project.⁶ The city or county may waive the requirement for a geologic report if it finds that no undue hazard of that kind exists, but the waiver must be approved by the State Geologist.⁷ The report must be in sufficient detail to meet criteria established by the State Mining and Geology Board for individual parcels of land.⁸ The local authority may charge a reasonable fee for such project review, based on the actual cost of administering the program.⁹ The approval of a project by a city or county that is affected by an identified ground fault is unlawful unless it is in conformity with policies and criteria established by the

State Geologist.¹⁰ The local authority also may establish policies that are more stringent than required by state law.¹¹

Projects to which the earthquake fault zone standards apply or do not apply. The foregoing requirements for new project approval under the Alquist-Priolo Act apply to any subdivision of land, as defined in the Subdivision Map Act,¹² which contemplates the eventual construction of structures for human occupancy, and also apply to any other structure for human occupancy.¹³ However, they do not apply to the following:¹⁴

(1) A single-family wood-frame or steel-frame building (or a mobilehome exceeding 8 feet in width) to be built on a parcel of land created by a subdivision for which the required geologic reports previously were provided; or

(2) A single-family wood-frame or steel-frame building not exceeding two stories in height (or a single family mobilehome exceeding 8 feet in width) that is not built in a development of four or more dwellings.

- ♦ Comment: The term “structures for human occupancy” is not otherwise defined. It would appear to include any residential, commercial, or industrial building or structure in which human beings reside, work, or carry on other activities, and there are no express exemptions for agricultural uses or incidental human activities in agricultural structures.¹⁵

Exemptions may be permitted by the local entity subject to standards imposed by the law. The Alquist Priolo Act includes a lengthy list of additional exemptions from the geologic report and permit requirements of the statute (although not from the disclosure obligations that also apply¹⁶). The exemptions include the following:¹⁷

(1) Conversion of an existing apartment complex into a condominium.

(2) A development or structure in existence prior to May 4, 1975, except in case of additions or alterations with a value in excess of fifty percent of the value of the structure.

(3) Any other alteration or addition to an existing structure that does not exceed 50% of the value of the structure.¹⁸

(4) Certain structures located in the Oakland/Berkeley fire zones between October 20, 1991 and October 23, 1991, as further defined.

(5) Certain alterations that constitute seismic retrofitting of unreinforced masonry, concrete tilt-up, or reinforced concrete moment resisting frame buildings, as defined by FEMA, that were in existence prior to May 4, 1975, subject to the following requirements: that the city or county must require retrofitting to strengthen the entire structure;

that the city or county must find the occupancy load no greater than the existing occupied use; that these requirements are included in a specific declaration in the building permit application; and that the exemption is reported in writing to the State Geologist.¹⁹ For those structures granted an exemption under this provision, the law includes additional limitations on increased occupancies and on renovation or retrofitting based on the historic building code.²⁰

Additional requirements apply under the Seismic Hazards Mapping Act. The foregoing requirements of a geologic report under the Alquist-Priolo Act are supplemented by the Seismic Hazards Mapping Act, which requires additional geotechnical analysis and disclosure for certain projects. If a project is proposed for an area that is identified in a seismic hazard map prepared under the statute, the project cannot be approved without submission of a geotechnical report defining and delineating any seismic hazard, taking into account criteria and policies developed by the State Geologist.²¹ The report must be prepared by a certified engineering geologist or a civil engineer practicing in his or her area of competence.²² If a city or county finds “no undue hazard,” based on information received concerning other similarly situated projects and the soils on those sites, it may waive the geotechnical report requirement.²³ If the city or county proceeds with an approved geotechnical report it must file the report and any mitigation measures with the State Geologist within thirty days.²⁴ If it proceeds with a project approval not in compliance with policies and criteria, the city or county must submit an explanation for the differences with the State Geologist within 30 days of the approval.²⁵ The local entity may also impose policies and criteria that are more strict than the state requirements.²⁶ In addition, there are various disclosure requirements applicable in case of a sale or transfer of the property.²⁷

Additional exceptions under the Seismic Hazards Mapping Act. As a general rule, the definition of “project” is the same in both the Alquist-Priolo and the Seismic Hazards Mapping Act.²⁸ However, a city or county may exempt any single family home from the requirements of the Seismic Hazards Mapping Act,²⁹ which is a broader exemption than applies under the Alquist-Priolo Earthquake Zone Act. Also, a “project” for purposes of the Seismic Hazards Mapping Act does not include any alterations or additions that do not exceed *either* 50 percent of the value or 50 percent of the existing floor area of the structure.³⁰ Except for these exclusions from the definition of the project and the discretionary waiver of single-family homes, there are no specific provisions delineating the

exceptions from the Act. A local agency may elect to waive application of this Act to a particular project, but the waiver must be in compliance with the State Geologist's policies and criteria and must be reported to the State Geologist within 30 days of the grant of the waiver.³¹

II. Building Code Requirements for Seismic Safety in New Construction and in Alterations and Additions to Existing Buildings.

New construction generally must conform with State Building Code requirements. Since 1933, the California Earthquake Protection Law³² has required building permits for all structures covered by the law³³ under a process intended to promote safety and structural integrity following an earthquake. The designated local seismic enforcement agency is charged with the review and approval of building permit applications for compliance with the requirements of the law, as well as any changes,³⁴ and the applicant is prohibited from starting work or altering the work in such a manner as not to conform with the submitted application, plans, and specifications as filed by the permittee.³⁵ The law generally requires all buildings subject to its requirements to be designed and constructed to resist stresses produced by lateral forces and ground shaking as provided in the State Building Standards Code.³⁶ That Code includes detailed provisions governing structural design,³⁷ testing, and inspections,³⁸ as well as foundation design, and soil and geotechnical investigations.³⁹ Other provisions relative to safety of mechanical, electrical, plumbing, gas, and other systems under severe shaking or ground movement are scattered throughout the State Building Code, as required by the statute.⁴⁰

Exceptions for existing buildings and for new construction of certain buildings. Despite the broad and detailed requirements for compliance with earthquake safety standards in new construction, the Earthquake Protection Law includes several exemptions.⁴¹ The statute directly exempts all of the following:

(1) Any building existing or under construction on or before May 26, 1933,⁴² except to the limited extent provided for reconstruction after an earthquake damages the structure.⁴³

(2) Any building located entirely outside the limits of a city, or a city and county, that is not intended primarily for occupancy by human beings.⁴⁴

(3) Any building designed and constructed for use exclusively as a dwelling by not more than two families and not located within the limits of a city or city and county.⁴⁵

(4) Any building (wherever located) that is designed and constructed primarily for specified agricultural purposes, *i.e.*, housing poultry, livestock, hay, grain, or farm machinery and supplies, even though persons may work in or be present in the building from time to time.⁴⁶

Most workplaces and places of business are not exempt. Despite the apparent breadth of the foregoing exemptions, a store, factory, or facility where persons commonly are present or work in or about the building is *not* exempt, unless it is one of the agriculture-related buildings or dwellings referred to in the specific exemptions above, whether or not located within the limits of a city or city and county.⁴⁷ “Occupancy” in this context means *use*, not habitation by human beings.⁴⁸

Local deviations from the state earthquake law. A local ordinance adopted by a city or county may adopt construction standards higher than those imposed by the Earthquake Protection Law.⁴⁹ Such non-state mandated construction codes are subject to the current restrictions on local deviations from the State Building Standards Code. Any such locally-increased standards must be filed with the California Building Standards Commission and accompanied by required findings under the State Building Standards Law, including the requirements for findings of local climatic, geologic, or topographic conditions necessitating the change.⁵⁰

- ♦ Comment: There is no mandatory requirement that local ordinances impose these requirements on otherwise exempt structures and buildings; it is unclear whether the statute is intended to occupy the field and preclude local requirements for such exempt structures and buildings, or whether the concept of “higher construction standards” can be imposed, for example, on exempt agricultural buildings or dwellings outside the limits of a city or city and county. Case law, however, suggests that a local entity can impose its more stringent requirements on otherwise exempt structures such as pre-1933 unreinforced masonry structures as a reasonable exercise of the police power.⁵¹

Construction in violation of the statute. Any person who constructs a building in violation of the requirements of the state law, or otherwise violates the law or causes another person to do so, is guilty of a misdemeanor.⁵²

III. Limited Application of Current Seismic Safety Code Requirements to Existing Buildings Absent Substantial Alterations or Additions.

Limitations on structural upgrade requirements applicable to existing buildings. There is no generally applicable state law mandating the implementation of seismic retrofit standards to strengthen older buildings that were not subject to current code requirements at the time of original design or construction.⁵³ The large number of exemptions from the Earthquake Protection Law, including in particular the exemption for pre-1933 buildings, means that many existing structures could not meet current seismic code requirements if built today, but the requirements for upgrades of these buildings are limited and largely discretionary. None of the Code-required upgrades apply except in connection with a repair, alteration, addition, or change in use that requires a permit or certificate of occupancy; otherwise, the owner generally has no Code-required duty to upgrade in the ordinary course of maintenance or repair of an existing structure.⁵⁴

Changes in use or alteration. To the extent a change in use or additions or alterations are made to existing buildings, the State Building Code⁵⁵ will require compliance with current standards covered by the California Fire Code, California Mechanical Code, California Plumbing Code, California Residential Code, and California Electrical Code for the area of the addition or alteration.⁵⁶ The State Building Code generally restricts the extent of upgrades that can be required in connection with a change in use or an alteration, repair, or addition to an existing building. As to the materials and methods of construction applicable to the building structure and facilities, the existing materials and methods already in use may remain unless determined to be unsafe by the building official.⁵⁷ The owner must be permitted to use original methods of construction and materials for the replacement, retention, and extensions of a building subject to the State Housing Act if it complied with building code provisions in effect at the time of construction and the building is not substandard.⁵⁸ In other respects, new materials compliant with current code must be used for additions or expansions, but existing materials may be used for repairs or alterations.⁵⁹ An addition must meet all code requirements for new construction, and any alteration of the existing structure to accommodate the addition must be evaluated together with the addition to assure that the existing building with its additions is “no less conforming with the provisions of this code than the existing

building or structure was prior to the addition.”⁶⁰ In connection with any alteration or addition, additional strengthening of the existing structure may be required to conform with upgraded live loads and lateral loads, subject to additional limitations.⁶¹

Additional requirements for a change in occupancy of an existing building. For a change in occupancy, if the structure is reclassified to a higher risk category because of the change in use, seismic requirements applicable to a new structure in the higher risk category may be imposed, but no such requirements apply if the change is to an equivalent or lower risk category, nor for a change within the range of certain other low risk categories.⁶²

Exceptions to the limitations on structural upgrade requirements. Despite the general limitations on seismic upgrade mandates, the State Building Code and applicable statutes include certain exceptions applicable to non-governmental buildings in the state.

First, any additions, alterations, or repairs of a building deemed unsafe by the local building official may be required to be upgraded.⁶³

Second, the Code allows for *voluntary* seismic improvements to be made in order to improve the performance of the seismic force-resisting system of an existing building that is undergoing alterations, subject to certain required engineering analyses.⁶⁴

Third, if the building has already suffered structural damage to the vertical elements of its lateral force-resisting system, the building must be evaluated and repaired to a level of at least 75% of the current standards applicable to new construction.⁶⁵ However, even this level of upgrade cannot be imposed on a one- or two-family dwelling.⁶⁶ Also, a building assigned to Seismic Design Category A, B, or C is not subject to these requirements if its structural damage was *not* caused by an earthquake.⁶⁷ The determination of seismic design categories is covered by a series of site-specific and structural calculations based on probable earthquake intensity, ground shaking potential, and other factors detailed in the Code and in referenced ASCE standards; most wood-frame buildings and one- to two-family dwellings are assigned to the lower classifications or exempt, but a detailed seismic safety analysis may be required to establish this.⁶⁸

Mandatory retrofitting of buildings to include seismic gas shutoff devices and water heater strapping. The limited scope of local-option seismic retrofit requirements does not apply to certain specific retrofit

requirements imposed directly on certain properties under the Health and Safety Code:

(1) *Gas shutoff devices on buildings open to the public.* Local ordinances may require installation of earthquake sensitive gas shutoff devices in “buildings open to the public”; these devices must meet standards established by the State Architect and must be certified as compliant with such standards.⁶⁹

(2) *Water heater strapping and installation.* All existing residential water heaters, as well as all new or replacement residential water heaters, must be braced, anchored, or strapped in compliance with standards in the State Plumbing Code, as modified by local ordinance.⁷⁰ The manufacturer or installer must meet additional requirements, including warning labels and installation instructions.⁷¹ Failure to comply with the requirements does not create a presumption of a lack of due care,⁷² but the violation may be deemed a nuisance if not corrected by the owner or its agent.⁷³ The owner may not evict a tenant in order to comply with these requirements.⁷⁴ A seller of real property is required to certify compliance to the buyer under a specified procedure.⁷⁵

Seismic retrofit requirements for larger buildings with concrete or unreinforced masonry construction. Any building that encloses more than 20,000 square feet of floor area with concrete or masonry column or wall construction is subject to certain retrofit standards prescribed by the State Architect.⁷⁶ A number of types of buildings are excluded where covered by other provisions, including unreinforced masonry buildings covered by the statute governing potentially hazardous building inventory and mitigation programs for unreinforced masonry discussed in the next part of this Article, among others.⁷⁷ These seismic retrofit standards have been incorporated into the current State Building Code.⁷⁸ The statute does not impose an affirmative obligation to retrofit such larger buildings (although it contains a definition of “seismic retrofit”⁷⁹) and does not require a seismic retrofit unless and to the extent the State Building Code requires it, which ordinarily is only in connection with a change in use or occupancy, or substantial repairs, additions, or alterations unless the building is actually deemed unsafe by local building officials, as discussed above.

Wall anchorage requirements for pre-cast concrete or tilt-up buildings. Another statute governs the installation of prescribed “adequate wall anchorages” between the walls and floor and between the walls and roof of a precast concrete or reinforced masonry building with

wood frame or floors.⁸⁰ Referencing particular portions of the Uniform Building Code of the International Conference of Building Officials that have been incorporated into the State Building Code,⁸¹ the law requires compliance with these standards in order to maintain eligibility for any state assistance program for earthquake repairs resulting from earthquake damage.⁸² It also requires the transferor's delivery to the transferee of the Commercial Property Owner's Guide to Earthquake Safety if the building was constructed prior to 1975,⁸³ with exceptions for certain specified transfers.⁸⁴ It also does not directly mandate seismic retrofitting except in the limited circumstances where the State Building Code may require such retrofitting, as discussed earlier.

IV. Local-Option Retrofitting and Disclosure Concerning "Soft Story" and Unreinforced Masonry Structures.

More extensive seismic safety upgrade and retrofit requirements may be imposed by ordinance on unreinforced masonry and "soft story" existing structures. The limited scope of required retrofit and seismic upgrades provided in the State Building Code for most alterations and repairs to existing buildings can be enhanced by a "local option" type of seismic evaluation and upgrade ordinance that is specified by a state law enacted in 1979.⁸⁵ A city or county may adopt an ordinance establishing seismic retrofit requirements for any buildings identified as potentially hazardous under the provisions of the law.⁸⁶ The statute identifies two categories of structures to which the retrofit ordinance may apply: (1) unreinforced masonry buildings that have exterior ornamentation that may fall, or exterior walls not anchored to the floor or roof, or that lack an effective system to resist seismic forces, or any one or more of these factors; or (2) wood-frame multi-unit residential buildings constructed before January 1, 1978, with seismically "soft, weak or open-front wall lines" at ground levels, as more particularly defined by model earthquake code retrofit standards. (These are typically "soft story" residential structures located over parking garages.)⁸⁷ This particular law does not apply to any other types of structures.⁸⁸

Applicable requirements of an authorized retrofit ordinance. If such an ordinance is adopted, it must require specified retrofitting of unreinforced masonry buildings by removing or anchoring exterior parapets and ornamentation, anchoring walls to floors and roof, addition of floor and roof diaphragms, and bracing to resist earthquake forces.⁸⁹ If the ordinance requires the retrofit of "soft story" residential structures, it must follow a nationally recognized model code for such retrofits.⁹⁰ The

law does not require both types of structures to be addressed by the local ordinance,⁹¹ and it also permits a local ordinance to require only the anchoring and stability of exterior parapets and ornamentation without any other required retrofitting of unreinforced masonry buildings.⁹²

Local governing bodies have considerable latitude as to the type of buildings and scope of requirements to which the retrofit requirement applies. The local entity also may establish higher standards for seismic retrofitting of buildings or structures needed for emergency purposes after an earthquake, such as hospitals and other medical facilities, police and fire stations, governmental disaster operating centers, and public utility and communication buildings deemed vital in emergencies.⁹³ The statute does specify the procedure and standards to be followed in identifying potentially hazardous buildings of either type, and requires the investigational evaluation to be carried out by a licensed structural engineer.⁹⁴ In the event that a city or county has adopted an ordinance establishing retrofit standards for seismically hazardous buildings, the local entity is required to file a copy of these standards and any amendments to the standards for informational purposes with the Department of Housing and Community Development.⁹⁵ If a building subject to such an ordinance is retrofitted and properly maintained, it cannot be required to be upgraded to any amended or additional local building standards unless it no longer meets the standards under which it was retrofitted and is therefore identified again as potentially hazardous.⁹⁶

- ♦ **Comment:** As a result of these provisions, the local ordinance must be consulted to determine applicable requirements, if any, in a given city or county. It is also undetermined by case law whether a charter city may adopt a more extensive seismic retrofit requirement than is permitted by the statute, or whether the state has occupied the field and preempted such ordinances.

Governmental immunity for failure to require retrofitting. A city or county, and any of its employees, is not liable for damages from injury to persons or property resulting from a failure to identify a building as potentially hazardous or otherwise on the basis of any assessment or evaluation performed, any ordinance adopted, or any other action taken under the foregoing statute.⁹⁷

Duty of local building departments to inventory and mitigate all potentially hazardous commercial buildings in Seismic Zone 4. Prior to 1989, the “soft story” and “unreinforced masonry” retrofit requirements of the 1979 statute did not actually require local agencies to

assess earthquake hazards and to identify potentially hazardous buildings; it only allowed them to do so.⁹⁸ Under legislation enacted following the 1989 Loma Prieta Earthquake that caused considerable property damage and death in the San Francisco Bay Area, the local building department of any city (general or chartered), or county located within Seismic Zone 4⁹⁹ was required to conduct an inventory and identify all potentially hazardous buildings within its territory, including current building uses and daily occupancy load.¹⁰⁰ In this context, “potentially hazardous building” includes any and all buildings constructed before adoption of local building codes and constructed of unreinforced masonry wall construction regardless of the nature of the use or type, except it does *not* include the following:¹⁰¹

- (1) Warehouses or similar structures not used for human habitation (unless the structure houses emergency services equipment or supplies);
- (2) Any building housing one or more but no more than five dwelling units; or
- (3) Buildings that qualify as “historical” as further defined.¹⁰²

The local entity could impose a fee for the local building department’s inventory and other mitigation and notification processes.¹⁰³ The local entity is immune from liability for any action or inaction to the same extent as provided in the above-referenced immunity provision applicable under the seismic retrofit statute.¹⁰⁴ The local jurisdiction is also required to establish a mitigation program for potentially hazardous buildings, which may include various limitations on occupancy levels, use, or demolition, tax incentives and other financial incentives, and application of structural standards “to provide life safety above current code requirements” and other measures.¹⁰⁵ The local entity may impose retrofit and seismic strengthening requirements under this legislation, but is not required to do so.

Further local entity inventory requirements. Each affected local entity in Seismic Zone 4 was required to submit a report on its inventory and mitigation program to the legislative body and the State Seismic Safety Commission by January 1, 1990,¹⁰⁶ and the Seismic Safety Commission was required to provide an annual report to the legislature.¹⁰⁷

- ♦ **Comment:** The reporting requirement for the local jurisdiction after 1990 is not explicitly stated, and the notice of the mitigation program has no particular state-imposed requirements, so this statute remains substantially “local option” in terms of actual seismic upgrade requirements imposed on the property owner by the local jurisdiction. The property owner’s

only direct state-mandated duties are the mandatory posting requirements discussed below.¹⁰⁸

Duties of the owner to post the property, and notify transferees and tenants if seismic risks are not mitigated. The owner of any property who has *actual or constructive notice* that the property is identified as potentially hazardous and who has not implemented locally-mandated measures to mitigate these risks has specific posting and disclosure obligations, imposed by the statute, as follows:

(1) The owner must post a sign that the building is constructed of unreinforced masonry and has not been retrofitted in accordance with an adopted hazardous building ordinance or mitigation program.¹⁰⁹

(2) The owner must include a statement in any rental or lease agreement that the building is unreinforced masonry and may be unsafe in case of an earthquake, as further detailed in the statute.¹¹⁰

(3) The owner or its agent must deliver to any transferee of the property, if built with wood frame floors or walls, and unreinforced masonry prior to January 1, 1975, a Commercial Property Owner's Guide to Earthquake Safety, except for certain transfers detailed by the statute.¹¹¹

(4) The owner is required to comply with the adopted hazardous building ordinance or mitigation program.¹¹² An owner who fails to do so is ineligible for any state assistance program for earthquake repairs resulting from damage during an earthquake until all other applicants have been paid.¹¹³

If the masonry walls of the building are non-load bearing due to a steel or concrete frame, the posting and notification requirements do not apply but other mitigation requirements may apply.¹¹⁴

Relationship to Natural Hazards Disclosure Act requirements. The inventory, mitigation, and disclosure requirements under this statute are in addition to, and not in lieu of, the more general disclosure obligation that applies to sellers or other transferors of real property located in a delineated earthquake zone or a seismic hazard zone as shown on a map prepared by the State Geologist; these latter obligations apply to both commercial¹¹⁵ and residential¹¹⁶ real property, but the disclosure obligation is essentially limited to a duty to disclose the fact that the property is in an earthquake seismic hazard zone and to provide an earthquake handbook to the purchaser or transferee.¹¹⁷

Rights of compliant building owner who has mitigated seismic risks. After an owner complies with the retrofitting requirements of

the local mitigation program or hazardous buildings ordinance, the owner is no longer required to post the sign stating the building is of unreinforced masonry and has not been retrofitted,¹¹⁸ nor that it poses an earthquake risk, and the owner also has no further obligation to provide the informational booklet to transferees, nor to include the earthquake warning language on leases and rental agreements.¹¹⁹ The owner may, if permitted by local ordinance, post a sign of specified size and language to the effect that the building has been improved in accordance with applicable safety standards applicable to unreinforced masonry buildings.¹²⁰ In general, the owner who has complied with whatever mitigation or retrofit program the local ordinance has imposed is no longer required to warn occupants or transferees of the risks, although the scope of the local ordinance determines whether, in fact, the risks were removed.

Penalties and liabilities for noncompliance. The owner of a building subject to the posting, notification, and signage requirements described above can be compelled by injunctive relief to do so, in a civil action filed by “any person,” subject to specified prelitigation notification processes.¹²¹ The owner can also be fined administratively by the local building department for failure to post the required signage within 15 days after notification that he or she is subject to the fine, and an additional \$1000 fine may be imposed if the noncompliance continues for another 30 days after the first fine is imposed.¹²² These obligations and liabilities are in addition to any others that may be imposed by law.¹²³ A provision that previously restricted the penalties and liabilities that could be imposed on a noncompliant owner by local ordinance has lapsed and is no longer in effect.¹²⁴ Further, a transfer of title is not invalidated by any failure to comply with any of the requirements of the law.¹²⁵

Duties of owners of seismically unsafe residential buildings. The foregoing provisions pertaining to unreinforced masonry commercial buildings are applicable to apartment buildings and other properties containing more than five dwelling units, but are not applicable to properties containing five or fewer dwelling units.¹²⁶ Another law covering residential properties applies to real property consisting of one-to-four dwelling units,¹²⁷ but it only requires the owner to *disclose* deficiencies actually known to the transferor and material to the transaction that may increase a dwelling’s vulnerability to earthquake damage and any corrective measures taken,¹²⁸ and to deliver a copy of the Homeowner’s Guide to Earthquake Safety to the transferee, together with the required

disclosure.¹²⁹ A failure to make the required disclosure does not invalidate a transfer of title,¹³⁰ and there are exceptions for certain types of transfers.¹³¹

Defects that must be disclosed or else retrofitted. A seller or transferor by exchange who has actual knowledge of any of the following is required to disclose them as soon as practicable before a transfer of title or execution of a long-term installment land contract,¹³² even if they have been corrected, in which case the transferor must also disclose the corrective measures that to his or her actual knowledge were taken.¹³³

(1) The absence of anchor bolts securing the sill plate to the foundation.

(2) The existence of perimeter cripple walls that are not braced with plywood, blocking, or diagonal metal or wood braces.

(3) The existence of a first-story wall or walls that are not braced with plywood or diagonal metal or wood braces.

(4) The existence of a perimeter foundation composed of unreinforced masonry.

(5) The existence of unreinforced masonry dwelling walls.

(6) The existence of a habitable room or rooms above a garage.

(7) The existence of a water heater that is not anchored, strapped, or braced.

Specified corrective measures. If correction occurs, this statute also prescribes the minimum code standards to be applied with respect to specific retrofit items including water heater strapping, wall anchorages, and cripple wall bracing with reference to specific provisions of the Uniform Building Code, although it also permits application of higher standards imposed by any local governmental modification.¹³⁴

CONCLUSION

As indicated from the preceding discussion, an owner of a building that is not constructed to current codes intended to assure seismic safety and ground shaking resistance may or may not have obligations to retrofit the building to meet current lateral loading and ground shaking safety standards. Except for the limited requirements for gas shutoff devices and water heater strapping, and for mandatory retrofit or earthquake loading requirements for places of public assembly or critical emergency facilities, as well as some hospitals and schools, where different requirements apply, a private owner is not legally required to upgrade the structure

except in connection with a substantial alteration or expansion. There are exceptions at the local level where more stringent requirements may have been imposed, as authorized by state law. Ultimately the local building officials must be consulted to determine whether and to what extent additional upgrade or retrofitting may be required under local ordinances and standards. In many cases, all that is required is a general disclosure of risks to tenants, occupants, or purchasers, and no physical upgrades are mandatory.

NOTES

1. Pub. Resources Code, §§2621 to 2630.
2. Pub. Resources Code, §§2690 to 2699.6.
3. Pub. Resources Code, §2622.
4. Pub. Resources Code, §2623.
5. Pub. Resources Code, §§2691, 2695, 2696.
6. Pub. Resources Code, §2623, subd. (a).
7. Pub. Resources Code, §2623, subd. (a).
8. Pub. Resources Code, §2625, subd. (c).
9. Pub. Resources Code, §2625, subds. (a), (b).
10. Pub. Resources Code, §2623, subd. (a).
11. Pub. Resources Code, §2624, subd. (l).
12. Gov. Code, §§66410 et seq.
13. Pub. Resources Code, §2621.6, subds. (a)(1), (a)(2), (c).
14. Pub. Resources Code, §2621.6, subds. (a)(2), (b).
15. Compare the more explicit exemptions in the Earthquake Protection Law, Health & Saf. Code, §§19100 to 19217 described in the text accompanying endnotes 41 to 46 below.
16. Pub. Resources Code, §2621.7; see Pub. Resources Code, §2621.9, imposing specific disclosure obligations with respect to property in a delineated earthquake fault zone.
17. Pub. Resources Code, §2621.7.
18. See *California Oak Foundation v. Regents of University of California*, 188 Cal. App. 4th 227, 257-258, 115 Cal. Rptr. 3d 631 (1st Dist. 2010), holding that the determination of 50% of the value is based on the value of the alteration or addition excluding the cost of non-integral facilities located adjacent to the Cal stadium and does not include future potential seismic upgrade projects for later phases of the project.
19. Pub. Resources Code, §2621.7, subds. (e)(1), (e)(2).
 - ♦ Comment: The granting of an exemption under this provision with respect to pre-1976 buildings is discouraged by Pub. Resources Code, §2621.8, which makes a city or county liable for earthquake related injuries or death caused by its failure to adhere to the strict requirements of Pub. Resources Code, §2621.7, subd. (e)(2).
20. See Pub. Resources Code, §2621.7, subds. (e)(3), (e)(4) for additional detail.
21. Pub. Resources Code, §2697, subd. (a).
22. Pub. Resources Code, §2693, subd. (b).
23. Pub. Resources Code, §2697, subd. (a).
24. Pub. Resources Code, §2697, subd. (a).
25. Pub. Resources Code, §2697, subd. (b).
26. Pub. Resources Code, §2698.
27. See Pub. Resources Code, §2694. See also Civ. Code, §§1102.1, 1103.
28. Pub. Resources Code, §2693, subd. (d).
29. Pub. Resources Code, §2693, subd. (d)(1).

30. Pub. Resources Code, §2693, subd. (d)(2).
31. Pub. Resources Code, §2697.
32. Health & Saf. Code, §§19100 to 19217.
33. Health & Saf. Code, §19130. Permit application requirements and fees are established under §§19131 to 19132.
34. Health & Saf. Code, §§19122, 19133, 19134.
35. Health & Saf. Code, §§19135, 19136.
 - ♦ Comment: The law includes provisions to avoid duplication of the permit application, submittal of review process required under the State Housing Act. See Health & Saf. Code, §19138.
36. Health & Saf. Code, §19150.
37. Cal. Code Regs., tit. 24, pt. 2, ch. 16, §§1600 to 1616, ch. 16A, §§1601A to 1615A.
38. Cal. Code Regs., tit. 24, pt. 2, ch. 17, §§1701 to 1711, ch. 17A, §§1701A to 1711A.
39. Cal. Code Regs., tit. 24, pt. 2, ch. 18, §§1801 to 1810, ch. 18A, §§1801A to 1821A.
40. See Health & Saf. Code, §19150.
41. See Health & Saf. Code, §19100.
42. Health & Saf. Code, §19100, subd. (d).
43. See Health & Saf. Code, §§19160 et seq., discussed at text accompanying endnotes 85 to 98, below.
44. Health & Saf. Code, §19100, subd. (a).
45. Health & Saf. Code, §19100, subd. (b).
46. Health & Saf. Code, §19100, subd. (c).
47. See *People ex rel. Breuning v. Berry*, 147 Cal. App. 2d 33, 39-40, 304 P.2d 818 (3d Dist. 1956).
48. *Id.*
49. Health & Saf. Code, §19101.
50. Health & Saf. Code, §§17958.7, 18941.5, subd. (b). See also Health & Saf. Code, §§17922.2 and 18941.6, allowing certain changes of building standards based on local conditions to strengthen hazardous buildings, discussed below.
51. *Barenfeld v. City of Los Angeles*, 162 Cal. App. 3d 1035, 1040-1041, 209 Cal. Rptr. 8 (2d Dist. 1984) (reversing summary judgment based on probability of reasonable exercise of the police power).
52. Health & Saf. Code, §19170.
53. Some state laws require seismic upgrades of certain public buildings and school buildings. See, e.g., Ed. Code, §§18191 et seq. See also Cal. Code Regs., tit. 24, pt. 2 §§3417.1 to 3422, which generally requires seismic upgrades to meet designated standards for such buildings.
54. See 24 Cal. Code Regs., tit. 24, §§3401.1.2, 3401.4.1, 3404.1, 3404.1.1, 3405.1, 3408.1, 3408.2.
55. Cal. Code Regs., tit. 24, pt. 2, §§3406.1 et seq. (Chapter 34, entitled “Existing Structures”).
56. Cal. Code Regs., tit. 24, pt. 2, §3401.3.
57. Cal. Code Regs., tit. 24, pt. 2, §§3401.4.1, 3401.4.5. The determination of unsafeness is made pursuant to 28 Cal. Code Regs., tit. 24, pt. 2, §116, which requires a determination that the structure is, among other things, “dangerous to human life or the public welfare,” and any repairs or upgrades must adhere to the requirements of Chapter 34 applicable to existing buildings.
58. Cal. Code Regs., tit. 24, pt. 2, §3401.4.1. See Health & Saf. Code, §§17912, 17920.3, 17922, subd. (d), 17958.8, 17958.9.
59. Cal. Code Regs., tit. 24, pt. 2, §3401.4.2.
60. Cal. Code Regs., tit. 24, pt. 2, §3403.1.
61. Cal. Code Regs., tit. 24, pt. 2, §§3403.3, 3403.4 (applicable to additions), §§3404.3, 3404.4 (applicable to alterations).

62. Cal. Code Regs., tit. 24, pt. 2, §§3408.1, 3408.4.
63. See Cal. Code Regs., tit. 24, pt. 2, §§3401.4.1, 3401.4.5.
64. Cal. Code Regs., tit. 24, pt. 2, §3404.5.
65. Cal. Code Regs., tit. 24, pt. 2, §3405.2.
66. Cal. Code Regs., tit. 24, pt. 2, §§3405.2, 3405.3.1.
67. Cal. Code Regs., tit. 24, pt. 2, §§3405.2, 3405.3.
 - ♦ Comment: These Code provisions have additional requirements for buildings required to comply with the 75%-of-current standards repair requirements, and should be reviewed for further detail.
68. Cal. Code Regs., tit. 24, pt. 2, §1613 (earthquake codes).
69. Health & Saf. Code, §§19181, 19182. See also Health & Saf. Code, §§19183, 19200 to 19204 providing for certification procedures and requirements.
70. Health & Saf. Code, §19211.
71. Health & Saf. Code, §§19212, 19213. Violations of these provisions may subject the violator to liability under the Bus. & Prof. Code, §§17000 et seq. See Health & Saf. Code, §19214.
72. Health & Saf. Code, §19211, subd. (e).
73. Health & Saf. Code, §19211, subd. (f).
74. Health & Saf. Code, §19211, subd. (c).
75. Health & Saf. Code, §19211, subd. (a).
76. Gov. Code, §8894, subd. (a).
77. Gov. Code, §8894.1. See the statute for other exceptions.
78. See Cal. Code Regs., tit. 24, pt. 2, §§3417 to 3424, 3411A to 3418A.
79. Civ. Code, §8894.2.
80. Gov. Code, §§8893 to 8893.4.
81. Gov. Code, §8893.1, referencing 1991 Uniform Building Code §§2310, 2336.
82. Gov. Code, §§8893.1, subds. (a), (b), 8893.4.
83. Gov. Code, §8893.2.
84. Gov. Code, §8893.3.
85. Health & Saf. Code, §§19160 to 19168.
86. Health & Saf. Code, §19162.
87. Health & Saf. Code, §19161, subds. (a)(1), (a)(2).
88. See Health & Saf. Code, §19162.
89. Health & Saf. Code, §19163, subd. (a).
90. Health & Saf. Code, §19163, subd. (b).
91. See Health & Saf. Code, §19162, providing for separate adoption of an ordinance for either or both of the two categories.
92. Health & Saf. Code, §19163, subd. (d).
93. Health & Saf. Code, §19163.5.
94. Health & Saf. Code, §19161, subds. (a), (b).
95. Health & Saf. Code, §19165.
96. Health & Saf. Code, §19166.
97. Health & Saf. Code, §19167.
98. Health & Saf. Code, §19161, subd. (a).
99. See Gov. Code, §8875.1. The statute refers to Chapter 2-23 of the Part 2 of Title 24 of the California Administrative Code. The current provision is in Cal. Code Regs., tit. 24, ch. 16, §§1613.1, et seq.
100. Gov. Code, §8875.2, subd. (a).
101. Gov. Code, §8875, subd. (a).
102. Gov. Code, §§8875, subd. (a), 8875.2; Health & Saf. Code, §37602.
103. Gov. Code, §8875.2, subd. (a).

104. Gov. Code, §8875.3. See Health & Saf. Code, §19167.
105. Gov. Code, §8875.2, subd. (b).
106. Gov. Code, §8875.2, subd. (c).
107. Gov. Code, §8875.4.
108. The statute also provides that it is not intended to make any state or local government responsible for paying the costs of strengthening a privately owned structure, reducing its occupancy, demolishing it, preparing engineering or architecture analyses, or any other costs associated with compliance of locally adopted mitigation plans. Gov. Code, §8875.2, subd. (b).
109. Gov. Code, §8875.8, subds. (a), (b).
110. Gov. Code, §8875.8, subd. (d).
111. Gov. Code, §8875.6.
112. Gov. Code, §8875.2, subd. (b).
113. Gov. Code, §8875.7.
114. Gov. Code, §8875.9, subd. (a).
115. Pub. Resources Code, §§2696, subd. (a), 4136, subd. (a).
116. Civ. Code, §§1103, 1103.1 to 1103.2.
117. See Civ. Code, §2079.8 (applicable to residential property), Pub. Resources Code, §§8875.6, 8893.2 (applicable to commercial real property).
118. Gov. Code, §8875.8, subd. (b).
119. Gov. Code, §8875.9 (providing that none of the requirements of §8875.8 apply if the building is compliant with the local hazardous building ordinance or mitigation program or is of non-load bearing masonry with a steel or concrete frame).
120. Gov. Code, §8875.9, subd. (b).
121. Gov. Code, §8875.8, subd. (f).
122. Gov. Code, §8875.8, subd. (c).
123. Gov. Code, §8875.8, subd. (g).
124. See former Gov. Code, §8875.10, as enacted by Stats. 2004, ch. 663 (AB 3033), §2, amended by Stats. 2005, ch. 22 (SB 2008), §78, which lapsed by its terms on January 1, 2009.
125. Gov. Code, §8875.95.
126. See Gov. Code, §8875, subd. (a).
127. Gov. Code, §§8897 et seq.
128. Gov. Code, §8897.2.
129. Gov. Code, §8897.1, subd. (a).
 - ♦ Comment: The law also applies to real estate licensees, but their only responsibility is to deliver the Homeowner's Guide to Earthquake Safety pursuant to Civ. Code, §2079.8.
130. Gov. Code, §8897.2.
131. Gov. Code, §8897.1.
132. See Gov. Code, §8897.1.
133. Gov. Code, §8897.2.
134. Gov. Code, §8897.3 provides:
 - (a) For the purposes of this chapter, if it is determined that retrofit work is appropriate to address potential deficiencies listed in paragraph (1) or (2) of subdivision (a) of Section 8897.2, the following standards shall be used:
 - (1) The foundation anchor bolt requirements of subdivision (f) of Section 2907 of Chapter 29 of the 1991 Edition of the Uniform Building Code of the International Conference of Building Officials, or any local government modification which establishes equivalent or higher requirements.
 - (2) The cripple wall bracing requirements of paragraph (4) of subdivision (g) of Section 2517 of Chapter 25 of the 1991 Edition of the Uniform Building Code

of the International Conference of Building Officials, or any local government modification which establishes equivalent or higher requirements.

- (3) The water heater bracing, anchoring, or strapping requirements to resist falling or horizontal displacement due to earthquake motion of Section 19215 of the Health and Safety Code.
- (b) Any qualified historical building or structure, as defined pursuant to Section 18955 of the Health and Safety Code, shall be permitted to utilize alternatives to the requirements of this section, as provided by the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code) and the regulations issued pursuant thereto.

♦ Comment: The statute has not been amended to update code references, but appears to provide an exception to the general restrictions on applying new code requirements to address single family structures found in the Code that do not otherwise apply to one and two unit buildings.

Miller & Starr Real Estate Newsletter

Executive Editor:	Karl E. Geier
Senior Editor:	Star Lightner
Editor Emeritus:	Edmund L. Regalia
Founding Editors:	Harry D. Miller & Marvin B. Starr
Attorney Editor:	John Frey
Production Assistant:	Cortney Carter
Design & Layout:	Specialty Composition/Rochester DTP

Miller & Starr Real Estate Newsletter (USPS # pending) is issued six times per year, published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at periodic rate is pending as St. Paul, MN. POSTMASTER: Send address changes to: Miller & Starr Real Estate Newsletter, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

Members of the law firm of Miller Starr Regalia have been writing and editing the treatise, Miller & Starr, California Real Estate 3d, and all prior editions, since shortly after the firm was founded in 1964. Karl E. Geier, a shareholder of the firm, is the current Editor in Chief of the treatise. The firm is headquartered in Walnut Creek, California, with offices in San Francisco and Newport Beach, California.



**MILLER STARR
REGALIA**

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nothing contained herein is intended or written to be used for the purposes of: 1) avoiding penalties imposed under the Federal Internal Revenue Code; or 2) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

Subscription information can be obtained by calling (800) 328-4880.

© 2014 Thomson Reuters