



Know Your Liability

By Tony Angelo

Are you aware of the laws regarding associations and proper maintenance to avoid liability? From pests to water intrusion, there are several factors that impact common areas and are mandated to be maintained and treated. Make sure that the associations you manage are aware and meeting these obligations.

The Davis-Stirling Act of 1985 (Civil Code § 4780):

Clarified that all condominiums and stock cooperative associations are responsible for the prompt, effective treatment of common area structures where “Wood Destroying Pests & Organisms” (termites, fungus & dry rot) are present, unless otherwise stated. Since the Davis-Stirling Act of 1985, Civil Code § 4780 has assumed the boundaries of the Structural Pest Control Act and the Business and Professions Code; the association is responsible for the treatment and repairs of common areas where there are Wood Destroying Organisms (WDO). The visual inspections should include the identification of termites, fungus and dry rot damage, as well as, repair recommendations and costs.

Structural Pest Control Act (Section 8550):

In Southern California most structural damage to wood and structures is caused from WDOs. For this purpose the Structural Pest Control Act was adopted. All structures are subject to the California Structural Pest Control Act. In order to perform inspections of structures for WDO, an individual must be licensed by the Structural Pest Control Board, Section 8550. State licensing authorizes a Structural Pest Control Operator to identify and issue recommendations for WDO reports and Notice of Completions with warranty for the required treatments and the structural repairs, which are required as a result of infestations and the damage to the structures from WDOs.

Hazardous Conditions and Liability Exposure:

Most damage caused to the wood of structures is from water intrusion (water in direct contact with wood) creating fungus conditions;

fungus left undetected or uncorrected will lead to dry rot. Fungus is a living organism, and if permitted to advance to a dry rot stage, hazardous conditions will occur. Liability exposure exists when wood is structurally damaged and is required to be removed and replaced. When left undetected, it becomes a safety hazard condition to the public.

Association common areas that become structurally damaged from WDOs can include decks, balconies, staircases, stair treads, handrails and roof sheathing. All wood exposed to the elements is susceptible to WDOs, causing possible hazardous conditions to occupants and liability exposure for the association. When repairs are performed, a common problem occurs in the industry: responsible parties contact a contractor/consultant to perform repairs or prepare specifications for estimates of a reconstruction project. Neither the contractor nor the consultant are licensed by the Structural Pest Control Board and are considered by the Structural Pest Control Board State of California, as unqualified individuals. Specifications for reconstruction estimates should be generated from the findings of the Structural Pest Control reports. Unlicensed individuals are required to work in conjunction with a licensed Structural Pest Control Operator where WDOs are present.

There are several reasons why reconstruction projects will require change orders from contractors to complete projects, and they will have “open end” contracts that could cost 30% to 50% more than original estimates. Contractors/consultants are not licensed to identify WDO. Contractors/consultants cannot

issue State of California required WDO reports, Notices of Completions, or issue warranties for work performed when WDOs are present. Contractors and consultants are not licensed to purchase or apply state registered termiticides or fungicides.

Fungus / Dry Rot Treatment (Section 1991):

Structural members, which appear to have only surface fungus damage, may be chemically treated and left (if only in the opinion of the inspector, the structural members will continue to perform the originally intended function). The structural members may not need to be replaced. When state required WDO reports are not issued by state licensed Structural Pest Control Operators with the proper identifications and warranties, where WDOs have created the damage and without state regulated termiticides and fungicides applied with proper recommendation to remove damage or reinforce damage to perform the originally intended function, this can create a safety hazard to the consumer and is a violation of the Structural Pest Control Act, Section 1991.

Proper Certification or Guarantees:

The primary purpose of the Davis-Stirling Act Civil Code § 4780, Structural Pest Control Act and the Business and Professions Code with respect to WDO infestations or infections is to ensure that property owners are protected from termites, fungus, and dry rot damage. The combined power of these three bodies of law requires that appropriate inspections, identifications, treatments and repairs shall be made to the structures by licensed and properly insured individuals. The property must be free and clear of all WDOs and only licensed Structural Pest Control Operators can issue certifications and warranties for the presence or absence of WDOs. It is essential that the responsible parties familiarize themselves with the provisions of the Davis-Stirling Act Civil Code § 4780, Structural Pest Control Act and the Business and Professions Code; these provisions directly define the responsible party's obligations for Structural Pest Control, and will limit hazardous conditions to the consumer and reduce liability exposure for management.

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