

4 Ways LA's Quake Retrofit Funding Impasse May Resolve

By **Andrew McIntyre**

Law360, Minneapolis (November 18, 2015, 4:17 PM ET) -- Los Angeles landlords and tenants are scrambling to figure out how to pay for a new requirement to retrofit more than 10,000 properties to withstand stronger earthquakes, and lawyers say financing is a big problem and major unknown.

Building owners must start taking action next year. And the battle over who will pick up the retrofitting's tab could end with landlords absorbing much of the expense, or with possible changes to city rent control laws pushing significant costs to tenants.

The California Legislature had tried to secure funding for the project earlier this year, only to be vetoed by Gov. Jerry Brown, but legislators may take up the cause again next year, lawyers say.

Here, Law360 looks at four ways the required earthquake retrofitting may gain funding.

Landlords May Be Stuck With Most of the Costs

The measure, passed last month by the Los Angeles City Council, calls for the city to start issuing notices to comply in early 2016, which means that at the moment, landlords are on the hook for the initial costs and figuring out what they must do to comply.

"We've already seen an uptick in client interest in trying to figure out how this is going to work into existing capital improvement programs," said Noel H. Fleming of Liner LLP. "They may be stuck in a situation where it's a bad economy, they have a hard time getting good rents, a hard time financing these types of improvements."

The law affects more than 13,000 soft-story, wood-frame properties, most of which are residential and have garages or other openings on the first floor. Required retrofitting procedures include using metal to shore up wooden posts and reinforcing walls with plywood.

"The bulk of these buildings are smaller apartment buildings where neither the owners nor the tenants may be in a position to fund construction costs," said Alex R. Baghdassarian of Peckar & Abramson PC.

The measure also concerns roughly 1,400 so-called nonductile concrete buildings, some of which are commercial. While the notices to comply will come soon, owners of the wood-frame properties have as many as seven years to complete the retrofitting, while owners of the nonductile concrete buildings have 25 years.

Rent Control Changes May Pass Costs to Tenants

Building owners are currently facing the burden to pay for required retrofitting, but Los Angeles may take up changes to rent control laws that could leave tenants on the hook for most or all the costs.

Although landlords can raise rents, most of the properties in question are rent-controlled, limiting a landlord's ability to sufficiently capture the costs of retrofitting while keeping up with the pace of inflation.

"Many of these apartment buildings that will require the retrofit are under rent control," said Benjamin J. Reznik of Jeffer Mangels Butler & Mitchell LLP. "That's really the issue."

Many properties in Los Angeles are subject to a 3 percent maximum for raising rents annually.

"It may be that the rent stabilization ordinance may need to be modified to allow owners of those buildings to pass along the cost of doing the retrofit," said Jack H. Rubens of Sheppard Mullin Richter & Hampton LLP. "Landlords and tenants can reach private agreements as to who is going to pay for the cost."

James B. Clarke, the executive vice president of the Apartment Association of Greater Los Angeles, told Law360 he estimates it will cost between \$3,500 and \$8,000 per unit to alter the wood-frame buildings, and even more for the nonductile concrete properties.

State Legislature May Pass Tax Break Legislation

A.B. 428, a bill sponsored by Assembly Member Adrin Nazarian that would have provided a 30 percent tax credit for earthquake retrofitting, made it to the governor's desk but was vetoed by Brown last month.

But efforts to retrofit old and vulnerable buildings in Los Angeles have been in the works for years, and lawyers expect the Legislature to try again in 2016.

"There's still more opportunity for the state Legislature to enact the tax credit," Rubens said. "The law can always be changed. Hopefully the state Legislature will once again approve some sort of tax credit."

A spokeswoman for Brown's office declined to provide comment on A.B. 428, instead directing Law360 to a letter the governor wrote last month to the California State Assembly saying he "cannot support providing additional tax credits" given the state's financial uncertainties.

"They'll probably go at it again in the next session," Reznik said. "Try to get another bill passed. Maybe tweak it to try to get Gov. Brown's approval."

External Funding May Come Through

With concerns about costs burdening landlords and tenants and the uncertainty over what, if anything, the Legislature will do, the Apartment Association of Greater Los Angeles has been casting a wide net for funding while exploring various other avenues, Clarke said.

He said while his organization has for the past year been studying how to finance such a program, that task just got a lot harder in the last month with A.B. 428's defeat, which he said put the process "back to square one."

"We're looking at the California Earthquake Authority. We've talked to the federal government," Clarke said. "We've explored the [Property-Assessed Clean Energy] program. We have asked the mayor's office for some incentives, such as an exemption from the gross receipts tax that's put on landlords."

Los Angeles Mayor Eric Garcetti's office could not be immediately reached for comment.

"We're still trying to find outside funding," Clarke said. "We're looking for every ingredient of what we're calling a funding stew."

--Editing by Katherine Rautenberg and Edrienne Su.

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