

# REGULAR, PREVENTIVE, DEFERRED & EMERGENCY MAINTENANCE

A fundamental duty of a board is to [maintain and repair the common areas](#). Collecting sufficient assessments to carry out that duty is required by statute. ([Civ. Code §5600](#).) Following are four types of maintenance.

1. [Regular Maintenance](#). Regular maintenance is routine and planned for. This main include changing burned out light bulbs, cleaning hallways, weekly mowing of lawns, treating the pool, etc. The cost of materials and labor are budgeted and expected.
2. [Preventive \(or Preventative\) Maintenance](#). Preventive maintenance is performed while equipment is still working so as to reduce the likelihood of its failing. It extends the life of equipment and structures. Preventive maintenance involves regular inspections and sometimes early replacement of components to ensure smooth operation of the equipment. It also includes things such as regular cleaning, lubrication, adjustments and the like of pool equipment, boilers and elevators. It may involve annual inspection of roofs and the application of sealants at seams or inspection and caulking of windows before leaks occur.
3. [Deferred Maintenance](#). Putting off maintenance that needs to be done.

*Proper Delays*. Planned short delays in maintenance to (i) raise funds for making repairs or (ii) staggering repairs for scheduling purposes are acceptable business practices. Even so, boards must take care to protect members from any damage that might be caused by such delays.

*Improper Deferrals*. Deferring maintenance for the wrong reasons can be a breach of the board's [fiduciary duties](#). Deferring maintenance to avoid spending money or raising dues is harmful to the membership because it (i) exposes the association to litigation and potential liability for damage caused by the deferrals, (ii) lowers property values, and (iii) increases the cost of the eventual repairs (which can result in huge special assessments). In addition, it may expose directors to claims of gross negligence, breach of CC&Rs, breach of statute ([Civ. Code §4775](#)), and breach of fiduciary duties. Under those conditions, the [business judgment rule](#) will probably not protect the directors from personal liability.

*Insurance*. Insurance companies will not pay for deferred maintenance. The purpose of insurance is to pay for unexpected catastrophic losses, such as fires, storms, floods, etc. Board members who think they can get a free ride by dumping their deferred maintenance on an insurance carrier are incredibly misguided.

4. [Emergency Maintenance](#). Emergency maintenance is unexpected. More often than not, it involves water damage from a burst pipe, or unanticipated roof leaks, or a slope failure. Emergency maintenance may also require an [emergency special assessment](#) to fund the repairs.

**Special Assessments**. To fund large maintenance projects when reserves are insufficient, see [Special Assessments](#).

## EMERGENCY SITUATION ASSESSMENTS

Normally, boards of directors cannot increase regular assessments more than [20% above the prior year's](#) regular assessments or impose [special assessments](#) (within a [fiscal year](#)) that in the aggregate exceed 5% of an association's [budgeted gross expenses](#) for that fiscal year, without membership approval. ([Civ. Code §5605\(b\)](#).) However, the Legislature provided an exception that allows boards, without membership approval, to impose a special assessment in excess of 5% if there is an "emergency situations." An emergency situation is defined by the Davis-Stirling Act to mean any of the following circumstances ([Civ. Code §5610](#)):

1. An extraordinary expense required by a [court order](#).
2. An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

3. An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual budget report under [Section 5300](#).

However, before it can impose or collect an "emergency situation" assessment under #3 above, the board is required to pass a [resolution](#) containing written findings as to (a) the necessity of the extraordinary expense involved and (b) why the expense was not or could not have been reasonably foreseen in the budgeting process. The [resolution](#) must be distributed to the members with the notice of the "emergency situation" assessment that is required to be provided by [Civil Code §5615](#).