

Los Angeles Times

Berkeley Balcony Collapse, Other Cases Spotlight Gap in Building Oversight

By Lisa Girion & Sarah Parvani

June 26, 2015

Two years after college students began moving into Berkeley's Library Gardens, a similar complex built by the same general contractor opened across the San Francisco Bay. Both low-rise complexes hug busy sidewalks, wrap around quiet courtyards and are bedecked with balconies.



They also share a dangerous problem: dry rot, the predatory fungus that feeds on moist wood, turning structural framing and support beams into dust. At Library Gardens, dry rot feasted on the wood joists holding up a fifth-floor balcony until the cantilevering gave way, causing six people to plunge to their deaths.

At the Park Broadway complex here, balconies also were besieged by dry rot but the hazard was discovered before anyone got hurt. "We were lucky," said one resident of the building, near San Francisco International Airport, 25 miles south of Berkeley.

Dry rot in wood beams that support elevated walkways and balconies is a common problem that often goes undetected, experts say. While deaths are rare, failures are not. The ones that involve serious injuries get headlines; if not, they usually escape public notice.

The collapse of a second-floor balcony at a UC Santa Barbara fraternity two years ago left five students with broken bones. The 1996 failure of a fourth-floor apartment balcony in San Francisco left one woman dead and 14 people injured.

Those failures are a symptom of a broader problem, experts say: There are huge gaps in the ongoing scrutiny of structural integrity hazards.

"The building enforcement community is not engaged," said Michael A. Quiroz, a Huntington Beach industry consultant who chairs a standard-setting commission. "There is a tremendous need to act now. There is a ticking time bomb out there now. I've talked to other colleagues about how many other balconies are out there that may result in similar failures."

Ideally, experts say, building owners should conduct dry rot inspections once a year, hiring professionals to drill into walls and peel back outer layers if moisture is detected. But robust inspections and repairs can be expensive. As a result, experts say, many buildings go unchecked for years.

Municipal building enforcers aren't picking up the slack, they say. Code enforcement units often don't visit dwellings after they've certified them for occupancy, unless they get a complaint. And people don't complain about problems they can't see.

In Berkeley, officials recognized this gap in oversight and a week after the balcony disaster called for a mandate on building owners to inspect balcony supports at least once every five years. State officials are considering whether the balcony collapse demands a broader fix.

The timely discovery of dry rot at Park Broadway began when a sprinkler popped open, flooding much of the 109-unit complex. The cleanup revealed signs of improper waterproofing.

Although the building was only two years old, property manager Frank Alioto was concerned because he knew how destructive water can be. An investigation uncovered widespread damage, including mold and dry rot. On some balconies the wood framing was in bad shape.

"From the outside it looked perfectly fine," Alioto recalled. "But when we opened it up, we saw so much damage that the framing that supported the guard rails was completely rotted out.

"If someone had leaned on it, it could have given way, and they could have fallen," he said.

Ten balconies were red-tagged.

What happened next has a lot to do with another key difference between Library Gardens and Park Broadway. At Library Gardens, the residents are renters. At Park Broadway, most are owners; Alioto works for them. So when he reported his findings to the condominium owners association, the group demanded the developer fix them. When the developer refused, the association sued.

Under California's "right to repair" law, builders and developers can be held liable for construction defects for up to 10 years. Builders complain that the law has encouraged a new form of "ambulance chasing," with some lawyers using free inspections to drum up litigation.

Tom Miller, the lawyer who brought the Park Broadway case, said the law creates a powerful incentive for condo owners to find problems early, before they become dangerous. "We've handled hundreds of these cases," he said.

Eight months after the condo owners filed suit, Park Broadway resident Sy Chin said he was awakened by the sound of water dripping into his bedroom from his neighbor's balcony above.

"This place is relatively new," Chin said. "It shouldn't have gotten to that point. Either they didn't know what they were doing or they didn't care.

The Park Broadway owners association eventually settled their suit, collected \$3.5 million and hired crews to fix the problems.

"No contractor or construction crew is perfect," said Harry Hui, president of the Park Broadway condo association. "But I feel very fortunate and happy that we took the initiative to recover enough funds so we are on our way to rebuilding."

In rental buildings, tenants have to rely on landlords to ensure the underlying integrity of the building. But, in many cases, repairs don't happen until conditions become hazardous, said Bill Leys, a private inspector and former balcony contractor. Leys said he was called out to an apartment building in Sun Valley a few years ago where underlying dry rot was identified only after a tenant's foot went through the floor.

"Somebody usually needs to get hurt or something catastrophic has to happen before they will go out and repair," he said.

It's not clear what type of inspection program was used at Library Gardens. City records show its inspectors responded to complaints on a number of occasions; none of the records mentions balcony integrity or dry rot.

Renters can go to court as well, but are typically relegated to small claims. Bigger, building-wide lawsuits are expensive and hard to organize, said Myron Moskowitz, an appellate lawyer.

When tenants have attempted to organize, the courts are not always receptive, he said. An appellate court in Los Angeles recently upheld the dismissal of an attempted class-action lawsuit on behalf of the residents of a Mid-Wilshire building, saying the landlord's responsibility to maintain safe and livable conditions was "not amenable to common proof."

In other words, each tenant is on his own.