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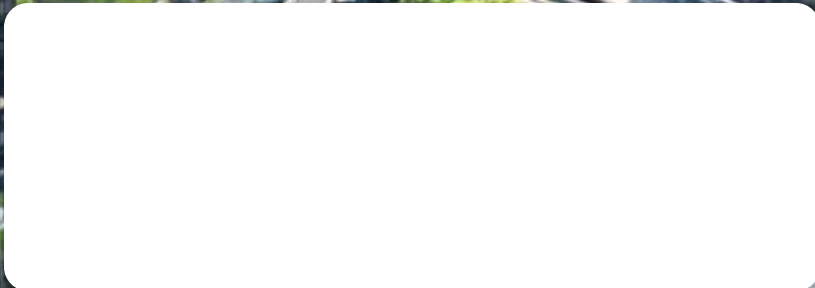
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by Pamela Dittmer-McKuen

CAPITAL PROJECTS REPORT 2024

Exterior restorations carry on; plumbing risers and EV chargers gain focus

Despite a few reservations, the business of capital projects in the Chicago area is robust, and expected to continue that way throughout the year. The word among architects and engineers who design these works is "cautiously optimistic."

Building owners, while navigating escalating costs and high interest rates, are investing in big-ticket repairs and restorations to assure the structural integrity of their properties. Those who are replacing mechanical, electrical and plumbing (MEP) components have their eyes on energy conservation and potential future mandates to do so, as well as the projects' disruptions of daily life for occupants.

Everyone, especially contractors, is still somewhat challenged by materials and labor shortages--holdovers from the pandemic years,

although perhaps not as fiercely.

Chicagoland Buildings & Environments surveyed a panel of industry pros who are on the forefront of capital projects to learn the types of projects they have on the drawing boards and in the fields. They shared their thoughts on how they are navigating the current business climate, and what they see as the upcoming trends and challenges. They also offered recommendations to help clients and prospective clients do the same.

Our participating pros are: Peter Power, president and senior principal, Klein & Hoffman; Hans Kiefer, senior principal at Kellermeyer Godfry Hart; Thomas Flynn, architect and senior associate at Klein & Hoffman; Adam Sanders, project engineer and team leader, Elara Engineering; and Adam

Kahn, partner and association attorney, Levenfeld Pearlstein.

Trending Capital Projects

On the whole, the panelists ranked exterior facade restoration and maintenance, plumbing system riser replacements, and roof replacements as the most common types of capital projects they are seeing. They also are taking on window replacements, parking garage repairs and restoration, fan coil replacements, balcony repairs, mechanical equipment replacement, rooftop deck installations, and electric vehicle (EV) charging stations. Demand is strong for reserve studies and condition assessments of individual building components.

At the architectural and structural engineering firm Klein & Hoffman, president and senior principal Peter Power says, "We have seen a lot of roofing-related work last year and



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Shown here is a general roof system replacement project underway.

going into this year. There has also been an uptick in the number of facade investigative efforts and condition assessment reports outside of the Chicago Facade Ordinance requirements. Reserve studies were also strong this past year. This type of service has been more closely aligned with some of the structural evaluation work.”

Rooftop deck feasibility studies and installations are also on the rise, he adds.

“EV charger implementations are increasing in frequency, both small-scale and large-scale implementations,” says Adam Sanders, project engineer and team leader at Elara Engineering. “Each client is approaching the implementations differently: Quantities and types of chargers, dedicated versus shared chargers, phased implementations, installing them all at once, and so on.”

A hot topic among condominium associations, in conjunction with kitchen waste-pipe replacement, is the removal of garbage disposals to avoid further pipe deterioration, he adds.

Surfside Collapse Still Wields Influence

The 2021 Surfside condominium collapse in

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Florida continues to levy an impact. Increasingly, owners of all building types are questioning the structural integrity of their properties, and they are seeking out professionals for examination, evaluation, and rehabilitation.

"We hear a lot of structural concerns and how well the building is holding up," says Hans Kieffer, senior principal at the architectural and engineering firm Kellermeyer Godfry Hart.

The "Condominium Safety Public Policy Report," released by the Community Association Institute, recommends changes to laws and best practices for the community association housing model that may help communities and legislators better address building safety. The public policy recommendations are in the areas of reserve studies and funding; building maintenance; and structural integrity.

"A key takeaway of the (CAI) Report as well as other policies that have been implemented is understanding the difference between a traditional reserve study and more focused studies on a specific building component, such as facades and foundations," Power says. "When

discussing a structural integrity inspection, it is also important to remember that these types of inspections generally occur on two levels: The first would be an initial baseline or preliminary assessment to act as a baseline for future inspections as well as to identify any areas of immediate concern. The second level is the more detailed investigation, which is intended to focus on any areas of concern that may have been raised or identified in the initial inspection."

In Kieffer's view, the most useful highlights of the Report are: Develop turnover requirements as a basis and reference for future inspections and decisions. Building inspection requirements to provide understanding that all systems require monitoring and repair. Transparent communication to the association and governmental agencies about building conditions with the goal of preventing injury and failures. Proper funding to assure repairs and maintenance can be performed once identified.

Jobsite Challenges Continue

Inflation, shortages of materials, and lack of skilled labor are among the challenges that impede capital projects. The result is longer

lead times, construction delays and higher costs for just about everything. Some of these issues seem to be evening out or even abating, according to the panel.

"We have seen a lot of roofing-related work this past year and going into 2024," Power says. "This sector continues to be plagued by material-related shortages, but availability and scheduling is improving. Window and skylight replacement projects are occurring, but we are also seeing material delays and long lead times here as well."

Among the reported shortages: Tapered roof insulation, some sealant product lines and colors, windows and glass, ready-mix cement, brick masonry, paint finishes, and membranes.

"There was definitely a spike in costs in 2020-2021," says Thomas Flynn, architect and senior associate at Klein & Hoffman. "These costs have stabilized over the last year. Lead times for specialty products can be longer than expected, but I have not seen a significant supply chain issue with standard products, although color options may be limited."

In Sander's observation and experience, the construction industry is very busy, and in many

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ways, still recovering from the effects of the pandemic. Delays in manufacturer deliveries are common.

"It is important for associations to plan in advance to ensure the projects can be executed in a timely manner," he says. "This may include pre-ordering long-lead equipment during design efforts."

"The inflation cost is in many areas, but definitely in construction," Kiefer says. "The shock is somewhat lessened for me, anyway, with the knowledge that the U.S. is actually much better off than most industrialized nations. Hopefully, inflation will be reduced since the world economies are trying to combat it."

Lack of qualified labor seems to be a greater issue in non-union companies than in union companies, he says.

"Contractors are always looking for qualified labor, especially during construction season, but we have not heard of any significant labor shortages this year," Flynn says.

Every project has some kind of unique challenges, whether code changes, access, schedules or expectations, he adds.

Waiting for Word on Decarbonization

Last year at this time, the industry was expecting a decarbonization policy to be handed down from the city of Chicago based on a report by the Chicago Building Decarbonization Policy Working Group. This did not happen, nor did the updated building code address the issue. Although a policy for decarbonization is anticipated, the "when" is unknown.

Decarbonization is an international effort to reduce greenhouse gas emissions, which are

known to contribute to global warming, in the manufacture and transportation of building materials, construction, operation and end-of-life cycle. The end goal is 2050 for net-zero carbon emissions.

"Other cities throughout the country have implemented decarbonization measures for existing buildings, and we are actively performing projects there to help decarbonize their buildings," Sanders says. "Code requirements for new construction or major renovations require designs that align with decarbonization measures, and we are doing that."

Currently, Elara Engineering is predicting a timeline of 3 to 5 years to account for the ordinance to be proposed, passed, implemented, and a likely grace period for clients to start taking action. In the meantime, Elara is encouraging clients to factor in decarbonization when requesting designs for and investing in equipment and infrastructure replacements.

Many industry pros are anticipating a Chicago policy to be similar to that of New York City, which calls for a series of stepped-up energy improvements. It is likely that the city's largest and most carbon-intensive buildings will be subject to the first phase of required reductions of energy and carbon.

Stay tuned for more.

Chicago Building Code Updates

As for the Chicago Building Code, updates have had a greater effect in some areas more than others.

"Wind loads have changed and are perhaps the biggest change, but there is not a noticeable impact on projects that we are involved with,"

Kiefer says.

"Changes to the roofing sections of the building code seem to have had the most impact on our work," Flynn says. "In particular, new insulation requirements, wind-uplift requirements, and changes to egress requirements for rooftop decks have had the biggest impact on our work."

"The largest impacts are on the new construction and major renovation," Sanders says. "Existing buildings are also being impacted. Code officials are starting to require buildings to adhere to code sections that previously would not have been enforced. For example, make-up air unit replacements are required to maximize the cubic-feet-per-minute (CFM) delivered to the building to help balance the building's pressurization."

Predictions for the Future?

Kiefer says he is pleased the Department of Buildings launched a web-based Express Permit Program to provide a new and improved way for home and building owners to obtain building permits needed to repair or replace existing features of a building or undertake specific small improvement projects. The program was launched in November 2023.

"It's too early to know how well it works, but we are excited to see the city trying the technology," he says.

Sanders anticipates the demand for EV charging stations to grow rapidly. He believes mandates will at some point address EV charging stations in existing buildings in addition to current laws regarding new construction and major renovations.

"We recommend clients establish a roadmap

moving forward with regards to EV chargers to prepare for future ordinance impacts," he says.

\$\$\$ Advice From the Pros

None of the panelists is in possession of a crystal ball to reveal where inflation, interest rates and other financial markers are headed. Amid the uncertainty, the panelists offered the following advice to building owners and community associations to help manage the costs of their upcoming capital projects:

- **Don't procrastinate.** Deferring maintenance will lead to expanded work scope, which could be compounded if inflationary increases do not subside within a reasonable timeframe, Power warns.

Encourage staff and residents to keep their eyes open and report maintenance issues before failures can arise, Kiefer says.

- **Bring in specialty pros.** Sanders recommends working with an MEP consulting engineer to develop a detailed request for proposal (RFP) to obtain pricing from contractors and manufacturers that conform to the requirements of the individual building.

"For example, it is important that fan coil unit performance conforms to the building's MEP systems to prevent shortening the lifespan of other major equipment and to adequately heat and cool the building," he says.

Condo associations should consult with their attorneys to determine the legal financial responsibilities of the association versus the unit owners, according to their governing documents, he adds.

- **Talk to your contractors.** Some have attempted to stockpile their own materials, and some desire to lock in pricing and scheduling earlier, ordering months in advance to avoid some of the unknown fluctuations. "It doesn't hurt to ask about possibilities," Power says.

- **Be leery of substitutions.** Many manufacturers have shifted raw materials toward more of their mainstream product lines and away from those that are not in as much demand.

"Make sure the products meet your application needs," Power says. "The wrong products in an application will lead to premature failures."



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**A Final Note:
Communicate Early and Often**

Capital projects can be in the works for months or years, and the numbers of people impacted are significant. Designers convey their specifications to project managers, contractors and subcontractors, who must work together in a seamless operation. Through it all, the lives of residents and building occupants may be disrupted with noise, dirt, obstructions, water shut-offs, re-routed passageways and

detailed communication, the panel advises.

For the most effective and efficient communication, early on, identify the points of contact for the owner, contractor, engineer, and other key players as well as their role in the project, Flynn says.

"We believe a team approach is important for everyone to stay on the same page," he says.

"For most projects, regular progress meetings turn problems into solutions, and setbacks into progress."

more inconveniences.

The more invasive the project, the more critical the communication.

Without precise information about what is happening and when it will occur, the results can be confusion, ill-temper and delays. Avoid these stressors with a campaign of frequent and

Says Adam Kahn, partner and association attorney at Levenfeld Pearlstein: "We recommend ample, clearly written communications to unit owners and residents as well as 'town hall' presentations with management, project manager, architect or engineer, contractor, attorney and other professionals to provide information and answer questions about the project. Coordination and communication are important in order to set appropriate expectations."

Social media, which is both pervasive and popular, has its merits when it comes to dispensing information. But it should be employed judiciously, and never be the only means, along the multiple steps and phases of a capital project.

"There are many ways to communicate today, and it is still important better to sit face-to-face or get on the phone in addition to sending text messages and email," Kiefer says. 🍃

by Jeffrey S. Youngerman Esq. - Flaherty & Youngerman, P.C.

Illinois Supreme Court Decides Landmark Insurance Coverage Case In Favor of Coverage for Construction Defect Damage

A Funny Thing Happened on the Way to Determine the Duty to Defend a Construction Defect Case

On November 30, 2023, the Illinois Supreme Court decided *Accuity v. M/I Homes of Chicago LLC*, which appeared to be just another coverage case deciding if an insurer owed a duty to defend a Developer in an underlying construction defect case.

However, to its credit the Illinois Supreme Court seized the opportunity to put Illinois coverage law clearly in line with the rest of the country.

I was the plaintiff's lawyer in the underlying case in *Accuity v. M/I Homes of Chicago LLC*, and like I have for many years, I alleged numerous facts central to the Illinois Supreme Court's ruling expressly adopting the majority view paving the way for coverage under standard Commercial General Liability (CGL) insurance policies.

Policy Exclusions are the Next New Battle

The Illinois Supreme Court ruled inadvertent faulty work causing damage to buildings is an "occurrence" or "accident" to which coverage applies under the initial grant of coverage of a modern standard CGL policy. The modern standard CGL policy surfaced in 1986, for an additional premium, included broad form coverage and completed operations coverage as part of the standard policy. No doubt insurers are lining up to fight the next new battle- the policy exclusions. Previously, courts in Illinois did not pay much attention to policy exclusions because they denied coverage without having to review them. Now that damage from construction defects potentially falls within coverage, I expect policy exclusions to be scrutinized. That is exactly what the trial court will be doing in *Accuity v. M/I Homes of Chicago LLC*. After concluding coverage is available under the grant of coverage, the Supreme Court remanded the case to the trial court to ultimately determine *Accuity's* duty to defend based on the policy exclusions since that was not the focus of the legal briefs of the parties.

History and Background on CGL Policy Claims

Historically, Illinois courts often denied coverage without interpreting the terms of the insurance policy. They relied on legal fictions such as coverage required damage to property other than the building itself, or that property damage was not an "occurrence" or "accident" to which coverage applied even though the policy never said that. To understand this decision's impact on the scope of coverage afforded in Illinois, we need to get into the weeds a little. First, it is important to understand the nature of CGL policies, the

exclusions and completed operations coverage. A CGL policy is liability coverage for claims brought by third parties. It will cover damage to property you are obligated to pay as well as pay for your defense to related claims. The way CGL policies are designed there is initially a broad initial grant of coverage sometimes referred to as the insuring agreement, which is later shaped and narrowed by policy exclusions. The initial grant of coverage is very broad and covers any property damage caused by an "occurrence," defined as an "accident including continuous or repeated exposure to substantially the same general harmful conditions. Previous Illinois appellate courts rejected coverage for property damage caused by construction defects based on concepts foreign to the actual text of the policy-i.e. that damage from defects are a natural and ordinary consequence of construction. Therefore, they can never be an "accident" to which coverage applies. What does that say? It says expect faulty workmanship every time a contractor swings a hammer. The Illinois Supreme Court, however, thought otherwise, recognizing the absurdity in denying coverage on these grounds. The Court rejected the premise that inadvertent construction defects resulting in property damage are always an intended and expected consequence of the contractors performing their work. The Court focused on the fact that the term "accident" in the initial grant of coverage was not a defined term in the policy. The Court applied the plain and ordinary meaning of "accident" as including "unforeseen occurrence" or "unexpected event," encompassing the "unintended and unexpected harm caused by negligent conduct." Thus, the Illinois Supreme Court held property damage resulting from inadvertent faulty work can be an "accident" within the meaning of "occurrence" triggering coverage under the initial grant of coverage in the insuring agreement. And so, ends decades of Illinois courts deciding coverage cases without applying the actual text of the policy.

Other Legal Fictions to Deny Coverage

One of the other legal fictions to deny coverage now debunked by the Illinois Supreme Court is CGL coverage applies only to damage to

property other than the building itself. This meant you could never have coverage for inadvertent construction defects that caused property damage to a building. Illinois courts would find coverage only for things like damage to a painting or a couch, but not any part of the building. The Illinois Supreme Court rejected the "damage to other property requirement," referring to it as "erroneous" again, because there is no text in the modern day CGL policy establishing this limitation to coverage. Other legal concepts to defeat coverage were also rejected by the Court as not being part of the actual text of the policy.

The Court also found the underlying Complaint alleged the exact type of "property damage" as defined in the policy and otherwise provided by Illinois law. Under the Court's ruling property damage to the building itself such as water damage to building materials is now clearly covered "property damage" under the initial grant of coverage.

More on Exclusions

Having determined inadvertent construction defects that cause property damage in a building could be covered under the initial grant of coverage, the Illinois Supreme Court turned its attention to the policy exclusions. In remanding the case back to the trial court, the Illinois Supreme Court singled out two potentially relevant coverage defeating exclusions for the trial court to review. They are exclusions (j) and (l) in the modern standard form CGL policy. If you apply the plain and ordinary meaning of the language of these exclusions it is highly doubtful that they will negate coverage where, at a minimum, a general contractor or developer hires subcontractors to perform their work. For example, exclusion (j) provides that the insurance does not apply to "that particular part of any property that must be ...repaired because your work was incorrectly performed on it." On its face it may appear this would exclude all property damage because it excludes property damage to "your work," defined to include work performed by you or on your behalf. However, this language only precludes coverage for claims involving defects to "that particular part" of the project you or your subcontractor are working on and should not limit coverage for property beyond that particular part. Additionally, exclusion (l) also contains an exception that restores coverage. It specifically states exclusion (l) does not apply to property damage included in the products-completed operations hazard found in the definition section of the standard modern CGL policy. Completed

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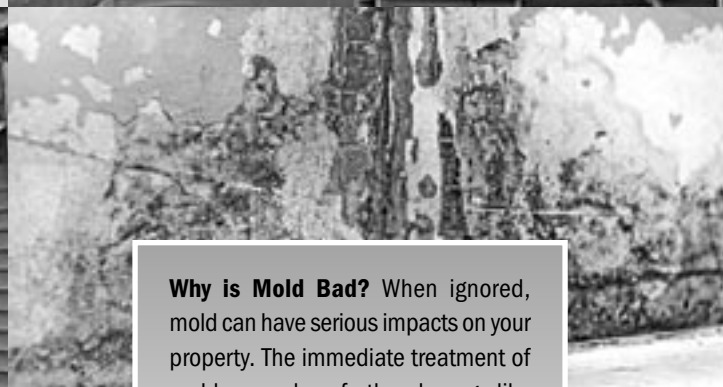
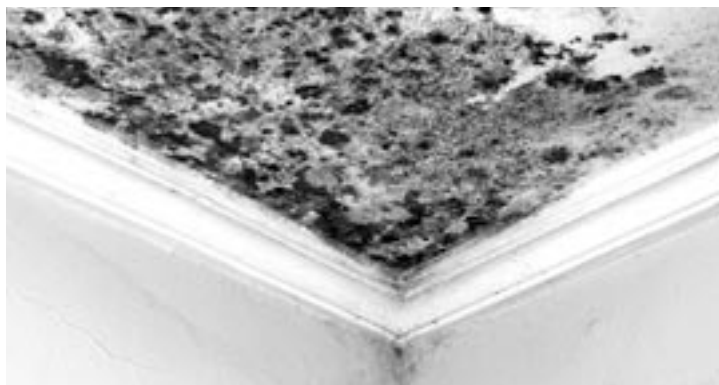
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operation coverage broadly applies to property damage to a contractor's completed work that occurred during the policy period. More about completed operations coverage later.

The other potential exclusion identified by the Illinois Supreme Court is exclusion (I). This excludes coverage for property damage to your work arising out of it or any part of it including property damage under completed operations coverage. But the standard CGL policy also contains a subcontractor exception to the exclusion. It states the exclusion does not apply if the damaged work was performed on your behalf

by a subcontractor. It should be noted some insurers have included special endorsements in their policy eliminating the subcontractor exception. Care should be taken to review if you have such special endorsement.

Application to other Situations?

The Supreme Court's ruling left open for the trial court to decide the coverage question for M/I Homes of Chicago LLC as an additional insured under its subcontractor's CGL policy. Generally, at minimum, there will be coverage for claims involving property damage caused by a subcon-

tractor's inadvertent faulty work and materials occurring after construction is complete. And that will apply to a boatload of situations given how common it is for general contractors and developers to carry their own CGL coverage and hire subcontractors to perform the work.

Renewed Focus on Indemnity Issues

In addition to fighting the exclusion battle to deny coverage, I expect insurers to place renewed focus on indemnity issues. For example, the completed operations coverage for property damage occurring after completion creates a myriad of evidentiary issues. Ultimately to prevail on indemnity for damages there must be proof of the damage occurring after completion, which in some instances may be difficult to prove. Care must be taken to document the damage, including who caused it, when it was caused, and extent of damage.

Other Takeaways

There are other takeaways from the Illinois Supreme Court decision for the construction industry. Developers and general contractors should re-review their CGL coverage including completed operations coverages to determine scope of their coverage including whether it contains any special endorsement negating coverage. If a claim or lawsuit is already pending, a new request for coverage should be considered. Forensic architects and engineers who are often on the front-line investigating defects and building damage claims should inform the owner to hire a knowledgeable lawyer in handling both construction defect claims and related insurance coverage to preserve and document damages giving rise to not only a claim but also insurance coverage. After all, the courts will look only to the four corners of the allegations contained in the underlying construction defect Complaint to determine coverage. For building owners who are planning repairs special attention should now be placed on requiring contractors to carry CGL coverage with completed operations coverage to cover property damage and require them to maintain it for a significant period after completion. Insurance brokers who sell CGL policies to the insurance industry must inform their clients whether the policy they are selling contains a special endorsement negating coverage, or otherwise includes a standard form CGL policy with completed operations coverage. Insurers in Illinois must re-evaluate their coverage positions on every single construction damage claim. Courts must recognize they have to interpret the actual terms of the insurance policy to determine coverage just like any other contract case. That is the law. It has always been the law.

It's a new day in Illinois in favor of insurance coverage in construction defect litigation. 🍀

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INDUSTRY HAPPENINGS



IREM Chicago Chapter

The Chicago Chapter of the Institute of Real Estate Management held their annual Installation Meeting for their Board of Directors at Pinstripes in Oak Brook in November of 2023. The officers and directors for 2024 were installed at the meeting and shown in the photo are:

Kris Cramer, CPM®, Colliers International / Chapter Industry Partner Committee Vice-Chair, **Jackie Abraham, CPM®**, FirstService Residential, AMO® / Chapter IREM Cares Committee Chair and Board of Directors member, **Kelli Stuart, CPM®**, Draper & Kramer, AMO® / Chapter Industry Partner Committee Chair and Board of Directors member, **Stephen Schimmell, CPM®**, The Missner Group / Chapter Membership Committee Vice-Chair and Board of Directors member, **Ian Novak, CPM®**, FirstService Residential, AMO® / Chapter Board President, **Kristian Sarkisian, CPM®**, ARM®, Draper & Kramer, AMO® / Chapter President-Elect and Chair of Chapter PREMIER Awards Committee, **Kim Sisney, CPM®**, Full Circle Communities / Chapter Treasurer and DEI Committee Chair, **Megaen MacDonald, CPM®**, Brian Properties / Chapter Secretary and **Chris Hawxhurst, CPM®**, Colliers International / Chapter Membership Committee Chair and Board of Directors member.

Board members not pictured:

Shruti Kumar, CPM®, The Habitat Company, AMO® / Chapter DEI Committee Vice-Chair, **Colleen Needham, CPM®**, Draper & Kramer, AMO® / Chapter Immediate Past President



Founded in 1953, IREM Chicago Chapter 23 has nearly 700 members who are charged with managing office, industrial and multifamily properties throughout metropolitan Chicago. The Chapter works to keep members informed on safety standards, legislative activities and other issues that have an impact on commercial real estate property management. And, it provides members with industry education, opportunities for community service, job referral services and guidance for candidates seeking to earn IREM industry designations.

On May 10, 2024, IREM Chicago will host its annual Premier Awards, an evening gala awards and dinner event where individuals, companies and organizations are recognized for excellence in various aspects of the real estate industry. For more information visit www.iremchicago.org

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The winter season has been mild overall so far except for approximately 10 days in January of extremely cold temperatures and several significant snow events. Most of us received over a foot of snow during that time with some areas getting even more. These snow storms followed by bitter cold were more than enough to provide winter challenges ranging from difficult driving conditions, icy walkways, frozen pipes, ice dams and snow removal.


Our economic conditions have remained more resilient than most people anticipated with continued low unemployment and plenty of travel and spending still taking place. The housing market has improved slightly despite much higher interest rates than we have grown accustomed to in the recent past. While prices are still higher than pre-pandemic times, inflation has continued to come down providing some relief. Hopefully economic conditions will improve even more and interest rates will adjust downward and provide a much-needed boost to the housing market.

Our cover story for this issue of CBE provides a report on current trends in capital improvement projects. Facade restoration, plumbing system riser replacements, and roof replacements rank as the most common types of capital projects that the professionals we talked to are working on. Our experts are also seeing a variety of other projects including window replacements, parking garage repairs/restoration, fan coil replacements, balcony repairs, mechanical equipment replacement, and electric vehicle (EV) charging station installation.

Another type of project that many multi-family buildings are contending with are clogged kitchen waste piping and issues related to garbage disposals inside the units at many properties. Balcony repair and maintenance projects are always important and are requiring resources and attention at many buildings. You will find some helpful information in two different articles on how to deal with these types of projects inside this issue.

We also offer two legal update articles in this issue. One article addresses new case law relating to Commercial General Liability insurance coverage in Illinois that comes out a case on determining the duty to defend a construction defect case. The other article covers the topic of how the Corporate Transparency Act Reporting Requirements are impacting community associations.

Our regular feature on the weather and your landscape serves as our *The Landscape Buyer* column article in this issue. This article provides a recap of how the recent past weather is affecting your outdoor landscape and a forecast of general weather conditions for the coming seasons.

We will continue to explore other relevant building management, restoration and maintenance trends, challenges, and initiatives in coming issues of CBE. If you have an idea that would benefit our readers, a story to share, or some advice on how to avoid a problem or failure, please call our office at 630-932-5551 or send us an e-mail (mdavids@condolifestyles.net). Those of you who are interested in becoming a subscriber or authorized distributor of our publications can obtain subscription information on our website www.chicagolandbuildingsandenvironments.com. 

Michael C. Davids
Editor and Publisher

Chicagoland
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THE Landscape Buyer

Volume 29, No. 2, Spring 2024

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by James A. Fizzell

The Weather and Your Landscape

What a strange winter. Unless you like cold and snow, this has been about as good as winters get here in Northeastern Illinois. For skiers, snowmobilers, and ice skaters, not so good.

I was out looking at the condition of the plantings now that winter is about half over. (February 5 was the midpoint.) The first thing that caught my attention was the chirping of some robins in the neighbor's tree, ... in Chicagoland, in January. It had rained, not snowed, during the night, but only enough to wet the pavement.

What little snow we had accumulated, remained in a few little piles at intersections where the plows had left it. The ground had thawed sufficiently that most of the recent rain and the snow-melt had percolated into the soil.

10 Days of Cold and Snow So Far

Winter certainly has been mild and dry, at least so far. There has been only about a week of real, sub-zero cold into mid-winter, and about a foot and a half of snow in our gauges, a Chattanooga winter. Precipitation has been almost all rain, a few tenths at a time, but keeping the ground moist. The snow disappeared almost as fast as it fell.

Desiccation and Snow Mold

Exposed grass showed the effects of both the lack of snow and the melting of what snow had fallen. Desiccation and snow mold both were present, an unusual combination.

Desiccation is common when the grass is exposed, and the lack of snow does not protect it from drying. Usually, these conditions do not provide enough moisture for snow mold. Snow mold needs a steady supply of cold water. With the regular light rainfall and a little melting snow this winter, there was just enough moisture, for the snow mold to grow.

With little snow and temperatures mostly above freezing, soil drying usually is expected, but the frequent light rains have prevented any anticipated drought conditions. The latest Palmer Drought Index shows all of Illinois to have adequate soil moisture.

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Will Winter Return?

We have seen these winters before. In the last two decades we have had a number of them. Some of them continued throughout the rest of the winter, but some have degraded into good, old-fashioned winters in the second half of the season. Will winter return with a vengeance this season? We shall see.

Long Range Forecast

For what to expect for the rest of the winter and spring, as well as some thoughts as to next summer, we turned to our favorite weather guru, Meteorologist, Greg Soule. For those of you who were able to read Greg's forecast for the winter, this mild weather is no surprise. He predicted it six months ago.

Greg expects it to be a "Ho-hum" year. We can expect a little more snow - not accumulating, some rain - no flooding, moderate temperatures - no records.

Normal Precipitation and Temperatures

Precipitation will continue about what is normal during the seasons, but mostly as rain. Temperatures will be about normal, a little cooler near the Lake and a bit warmer inland. The trend we have seen so far this year will continue for the foreseeable future. The moderate-to-strong El Nino continues, moderating as summer approaches.

Nothing should interfere with an early start to landscape operations. Just expect a boring uneventful season, he concludes.

El Nino Effects Continue

This is classic El Nino weather. An El Nino is caused by a warming of the ocean surface in the central and eastern tropical Pacific Ocean. The equatorial surface winds, "easterlies," weaken or may even start blowing the other direction. The polar jet stream tends to flatten out as it tightly winds around the intense low pressure at the north pole. That keeps the cold air bottled up and unable to drop down into the states. If something disrupts this, loops of the jet stream drop down bringing polar cold to the middle U.S.

These phenomena affect the weather patterns over much of the world. The effects on our weather can be enormous. A strong El Nino will give us the unusual warmth we are seeing and forces the precipitation down to the lower latitudes.

Some Plants Can Suffer with Mild Temperatures

While we humans generally appreciate this mild weather, our plantings may not. There are some distinct benefits to plants from the normal cold we expect in winter.

Our native plants developed over millennia of cold winters and easily tolerate them. Some are so adapted to them that they can suffer if they do not get enough winter cold. This cold exposure is called "vernalization." Some kinds of trees and shrubs need a certain number of days below a critical temperature for buds to break dormancy in spring.

Many kinds of herbaceous plants rely on the cold for seeds to germinate. The freezing and thawing break the seed coat so they can grow. Some need vernalization before they will flower. That is why we plant most of the bulbs in the fall. If they are planted in the spring, they do not bloom. Biennials make leaves the first year and unless exposed to a cold rest period will not bloom. Plant things like garlic in spring and they will not make bulbs.

More Pests and Weeds Survive Mild Winters

Many pests survive mild winters in protected spots above ground but are killed when temperatures fall to normally expected lows. Soil insects like Japanese beetle larvae are killed if there is no snow insulation. They only burrow down a foot or so into the soil. Common grubs burrow down deeply enough that they can escape the cold.

Some annual weeds are killed by the cold. Under snow or in more mild climates these survive the winters.

Other Impacts of Mild Winter

Normal freezing and thawing, wetting, and drying, mellow the soil. These cause the clay particles, that make our heavy soils so difficult to manage, cling together into tiny clumps called aggregates. Well-aggregated soils are well-drained, easily workable, and essential for maximum growth of plants. They are easily destroyed and difficult to re-establish.

Mild winters are hard on the contractors that push snow. Mild, snowless winters, like this one, can put a real dent in cash flow.

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Early Start to Growing Season Likely

If Soulje is correct, expect an early start to the season. As soon as things warm up a bit, make a thorough inspection of your site. Look for things that need attention. Your landscape and tree professionals can accompany you on this excursion. Make note of things that will need attention.

Inspect & Remedy Winter Damage

Brown turfgrass is easy to notice. Your contractor can determine the cause. Grass along walkways and drives may have been damaged by the early snow-removal operations. If the turf is scrapped out, have it shoved back in place. If the spot is bare, reseed it as soon as possible.

The early snow was very wet and heavy and may have broken down branches on trees and shrubs. Notice beds where perennials have been heaved out by the freezing and thawing. Have them reset at the correct depth before the roots dry out. Where plants have had insect problems in the past, plan to apply the correct controls this year.

There could be excellent survival of many insect pests. The benefit of mild weather is that predators have survived too and should provide early control of the pests. Normally many kinds of predators migrate here later in the season from more mild climates.

The early, extreme, short-lived cold may have damaged some kinds of shrubs, especially non-native kinds. Suddenly-dropping temperatures to below zero can severely damage parts of the plants not completely dormant. The lack of early cold did not cause plants to achieve full dormancy. Branches of these plants may develop cankers or may die back. Some damage may not appear until later in the summer.

Fertilize turf to repair snow mold damage. No spraying is needed. We can expect that the turf grass insects will survive without trouble. Whether you see lawn grub problems early or not, plan to treat for grubs. Apply long-lasting insecticides such as Merit as grubs are hatching about the July 4th.

If the season does turn dry, it may be necessary to water lawns and landscape plantings. Set the irrigation to operate about once weekly to provide a measured, one inch of water per time. Your contractor can set the timers to do this. During the season inspect the system when it is operating to make sure the nozzles are all working, the coverage pattern is right, and the timer is getting the right amount of water down each time. The systems can go out of adjustment and the nozzles can clog.

Double Dose of Cicadas to Appear

In May, an unusual event will occur. Two broods of cicadas will emerge concurrently. The last time this happened was in 1803. Brood XIII (every 17 years), will appear in the northern part of the state, Brood XIX (every 13 years) in the southern part. They will overlap a bit in the middle of the state, mostly along the eastern border with Indiana.

You will know when this happens by the racket males make attracting females. In the past it was so loud that it was hard to visit beneath infested trees. That has not been the case lately.

In 1939 and 1956 the emergence of Brood XIII was huge. Lately, the population has been reduced due to the loss of the old-aged forest, much of that due to the loss of the native elm population. When these large trees succumbed to Dutch elm disease, the feeding sites for a

big part of the brood were eliminated. These insects feed on the roots of trees for the 13 or 17 years they spend below ground. They emerge for a few days in the sun, to mate and lay eggs, and then disappear again for so many years.

This is the fifth time I have witnessed this spectacular event. The most memorable was in 1956 when the population was at its modern-day maximum. It was noisy!

Cicadas do not bite, do not sting, and do little harm to plantings. They feed sparingly, sucking sap from stems. Most damage is due to egg laying. Females slit the tips of twigs and insert dozens of eggs. The tiny, hatching nymphs fall to the ground and burrow in. Damaged twig tips may die and fall, or may recover with the slit healing over.

Feeding on the roots by the nymphs does no damage whatsoever.

There is no need to do anything to eliminate these interesting creatures. Spraying is not effective. Small trees that may be injured by the egg-laying should be covered with netting to keep the females off. Egg-laying lasts about three weeks and is over.

The periodical cicadas are not the same as the annual dog day cicadas that emerge every year in August.

Work With Professionals

The above are interesting topics for your information, and for understanding what is happening with your landscape plantings. Your landscape and tree care professionals know these, and are well trained to identify problems they cause with your plantings. They are aware of the potential challenges and are prepared to do what is needed to correct them. Make sure you keep in close contact with them. They are as interested as you are in making your plantings the best they can be.



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by Adam Sanders – Elara Engineering

Things You Need to Know About Kitchen Waste Piping and Garbage Disposals in Chicago Condos & Apartments

Kitchen Waste Piping and Garbage Disposals:

In recent years during plumbing pipe replacement projects, a topic of discussion has been the effect of food waste disposers (garbage disposals) on kitchen waste piping. For large multi-family buildings with cast iron piping in the City of Chicago, the potential for costly projects to replace or repair kitchen waste piping should be considered when discussing the installation and use of garbage disposals. Two approaches for the assessment of garbage disposals should be considered: Building Code impacts and practical experience.

Building Code Impacts:

Prior to 2023, the City of Chicago Building Code provided clear direction regarding garbage disposals in large multi-family buildings. Multiple City of

Chicago Building Code sections required the installation of a grease interceptor at the discharge of the kitchen waste piping prior to connection to the City of Chicago sewage system for multi-family buildings with over six dwelling units. The following code section prevents the installation of garbage disposals where grease interceptors are installed.

18-29-1003.3.2

Food waste disposers restriction.

No grease interceptor or separator shall receive the discharge from a food waste disposer.

Although the City of Chicago updated the plumbing section of its Building Code for 2023, the above code section remained. The City of Chicago Building Code removed requirements for grease interceptors in new multi-family buildings with



Shown here is an image of grease buildup in kitchen waste piping that undergoes regular maintenance.

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more than six dwelling units. Additionally, when code interpretations were requested regarding existing large multi-family buildings, code officials stated grease interceptors can be removed or bypassed based on the updated plumbing code. If grease interceptors are removed or bypassed, garbage disposals can remain in multi-family buildings.

Although the above information is valid, other code sections should be noted and taken into consideration. For example, multiple code sections provide overall limits to the quantity of fats, oil, and grease

(FOG) that can be discharged to the City of Chicago. Additional code sections allow City officials to measure or visually review the effluent leaving any building's waste system and require the installation of a grease interceptor due to excessive FOG discharge. Other sections provide new guidance to the construction and sizing of required grease interceptors that may differ from previous code requirements.

In summary, while the Building Code allows for the removal or bypass of grease interceptors, City Officials can enforce the installation of new grease

interceptors. New grease interceptors may be required to meet current code requirements possibly resulting in new construction, new sizing and new location. Building owners should be aware of these potential additional costs that could arise from making efforts to maintain garbage disposals.

Practical Experience:

The nature of typical kitchen sink usage results in a buildup of grease in kitchen waste piping. Garbage disposals encourage unit occupants to discharge food waste to the kitchen waste piping instead of garbage.

As food waste enters the kitchen waste piping it is unable to move downstream due to the buildup of grease. Improper pitch and/or lack of regular thorough maintenance will further contribute to additional grease and food waste deposits in the piping. Additionally, food deposits decompose over time resulting in acidic off-gassing which condenses into a liquid, coating the interior of the pipe in a corrosive liquid. Over time, the liquid corrodes the cast iron kitchen waste piping from the inside out, shortening the lifespan of the piping. The pictures on this page are examples of cast iron kitchen waste piping that demonstrate failures resulting in the process described above.

Pipe Maintenance is Important

The interior condition of kitchen waste piping is difficult to determine as during video scoping grease covers the camera upon insertion into the pipe. Kitchen waste piping maintenance typically requires more frequent and potentially more aggressive methods to remove the ongoing buildup of grease throughout the entire piping system. Maintaining piping with active corrosion can increase the risk of potential pipe failures during maintenance efforts. The maintenance efforts needed to thoroughly remove grease from the entire kitchen waste piping can be invasive as the vertical piping is typically located within the foot print of dwelling units. Grease interceptors require cleaning with a frequency matching the buildup up of grease. Note, with a change in building staff or maintenance contractors, a loss of knowledge may occur resulting in reduced maintenance efforts which will likely accelerate pipe deterioration.

As maintenance staff has reported to Elara representatives, on average, large multi-family buildings without garbage disposals perform kitchen waste piping maintenance 1-2 times a year to maintain functionality. Also reported to Elara, large multi-family buildings with garbage disposals typically perform maintenance 3-4 times a year to maintain minimal functionality while continuing to experience clogs. Several buildings with garbage disposals reportedly perform kitchen waste piping maintenance more frequently with the most frequent maintenance efforts being 12 times a year. See the image on the prior page of grease buildup in kitchen waste piping in a large multi-family building that undergoes regular maintenance.

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Shown above are examples of cast iron kitchen waste piping that demonstrate failures resulting in the process described in this article.

Typical rodding may keep a small passage open in the short term however, the piping will continue to be prone to clogs and other functional issues until more invasive methods are utilized.

Enzymes and Other Products Unproven

Throughout the years, several enzymes and other products have been marketed to remove grease from kitchen waste piping. As maintenance staff has reported to Elara, thus far, the effectiveness of these products has not been proven to make a discernable difference to the presence of grease within the piping or reduce the amount of required maintenance.

Pipe Replacement or Lining in Place are Options

If adequate maintenance is not performed in combination with the use of garbage disposals, repair or replacement of the kitchen waste piping may be necessary. Two common methods for addressing corroded piping include replacement or lining in place. Structurally compromised piping will no longer be a candidate for lining in place and will likely require replacement. Newly installed piping can be provided with additional protection from corrosion utilizing commercially available products.

Engineering Recommendations: Removal of Garbage Disposals in Condo Units

Despite changes to the plumbing code, Elara continues to recommend removal of garbage disposals in existing large multi-family buildings. Elara's recommendation is based on our practical knowledge and the resulting capital expenditures our clients are funding. Removal of garbage disposals contributes to less maintenance, reduced functional issues, and slower pipe deterioration. This topic should be discussed further with your preferred Plumbing Engineer, Plumbing Maintenance Contractor, and Attorney based on the specific conditions of your building. 🍃

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by Laura L. Marinelli, Howard S. Dakoff, Adam T. Kahn and Molly E. Mackey - Levenfeld Pearlstein, LLC

Corporate Transparency Act Reporting Requirements: What Do Illinois Community Associations Need to Know?

In 2021, Congress enacted the Corporate Transparency Act ("CTA") in an effort to protect the U.S. financial system from illicit use. Generally speaking, the CTA requires business entities operating in the U.S. to report certain information regarding their beneficial owner(s).

The CTA is slated to take effect on January 1, 2024, and imposes certain reporting requirements by January 1, 2025. Notably, the CTA's reporting requirements are very broad and likely extend to most condominium and community associations and co-ops. Specific questions regarding the CTA for condominium and community associations and co-ops are answered below.

Does the CTA Really Apply to my Condominium, Community Association or Co-Op?

Most likely, yes.

There are twenty-three types of entities that are exempt from the CTA's reporting requirements, including organizations that file their annual tax returns under Section 501(c) of the Internal Revenue Code ("Code"); however, the vast majority of condominium and community

associations and co-ops file their annual tax returns under Section 528 of the Code, which would not qualify for an exemption from—and are thus subject to—the CTA reporting requirements. It is a recommended best practice to check with the tax preparer for your condominium, community association or co-op to confirm whether it is exempt from the CTA's reporting requirements (i.e., whether an "1120-H" tax return is filed under Section 528 of the Code such that the reporting requirements apply).

Note: There is talk (and even lobbying efforts by industry professionals) that all condominium and community associations and co-ops may be exempted from the CTA

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reporting requirements in the coming months; however, at present no such expanded exemption has been adopted and thus absent a new exemption, the CTA reporting requirements will apply to most condominium and community associations and co-ops.

So, the CTA Applies to my Condominium, Community Association or Co-op; What Do We Need to Report?

Entities subject to the CTA must report certain information for the entity as well as its "beneficial owners." Condominium and community associations and co-ops that are subject to the CTA must report their corporate entity name, address, state of formation and employer identification number (EIN). In addition, the following ownership information must be reported for each beneficial owner of the association:

1. the individual's legal name;
2. the individual's birthdate;
3. the individual's address (in most cases, a home address); and

4. an identifying number from a driver's license, passport, or other approved document, as well as an image of the relevant document.

Per the current regulatory guidance, this information must be submitted electronically to the Financial Crimes Enforcement Network of the U.S. Treasury Department ("FinCEN").

Who Qualifies as a "Beneficial Owner" of a Condominium, Community Association or Co-Op?

A beneficial owner is anyone who (i) exercises "substantial control" over the entity, including Board members; or (ii) owns or controls at least 25% of the ownership interest. Notably, this means that individual Board

members will need to provide the beneficial ownership information listed above. In addition, if there is a "bulk" owner that owns 25% or more of the ownership interest of a condominium, community association or co-op, the bulk owner would also qualify as a beneficial owner and be subject to these




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reporting requirements.

When is the initial CTA Reporting Deadline?

Condominium and community associations and co-ops that are in existence as of January 1, 2024 and are subject to the CTA's reporting requirements must submit the required information to FinCEN on or before January 1, 2025.

Note: It is possible that the effective date of the CTA and the initial deadline for reporting will be pushed back in the coming months to give additional time for entities to prepare for this new reporting requirement.

What if Beneficial Owner Information Changes? Do We Need to Report It?

Yes. Future changes to beneficial ownership information must be reported to FinCEN within 30 days of the change becoming effective. Corrections to previously filed reports must be reported within 30 days of becoming aware of or having reason to know of an inaccuracy. This requirement is particularly

onerous for condominium, community association and co-ops, as an updated filing may be required whenever there is a change in the composition of the board, such as the election or appointment of a new board member.

Are There Penalties for Failing to Comply with the CTA Reporting Requirements?

Yes. Any person who willfully provides false or fraudulent beneficial ownership information to FinCEN or willfully fails to report complete or updated beneficial ownership information to FinCEN is liable for a civil penalty of up to \$500 per day that the violation continues and may be fined up to \$10,000 and / or imprisoned for up to two years.

Takeaways

- The CTA is a new law with far-reaching reporting requirements that, in their present form, extend to most condominium and community associations and co-ops.

- Condominium and community associations and co-ops that are subject to the CTA will be required to disclose certain entity and board member (i.e., beneficial owner) personal information by January 1, 2025, and update this information on an ongoing basis.
- It is possible that the reporting deadline will be pushed back and / or condominium and community associations and co-ops will be exempted from the CTA reporting requirements altogether. In the event of any such update to the CTA, expect to see additional guidance from LP.
- For now, condominium, community association and co-op boards should be aware of this new development in the law and work with their accounting, management and legal professionals to prepare for the January 1, 2025 reporting deadline. 📌

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by Trey Waldman - Waldman Engineering Consultants, Inc.

Enhancing Balcony Integrity: A Guide for Owners and Property Managers

Balconies are more than just personal outdoor spaces; they are vital architectural elements that enhance building aesthetics and provide residents with a private area to enjoy the outdoors.

The usability and safety of these balconies rely on their structural support systems and maintenance practices. If you own or manage properties with balconies you must have an understanding of the different balcony types, their support mechanisms, maintenance requirements, and damage indicators.

1. Types of Balcony Support Systems

Understanding the various balcony support systems is crucial for effective maintenance and inspection.

- **Cantilevered Balconies:** Characterized by their lack of external bracing, these balconies are anchored to the building's load-bearing walls, offering a modern aesthetic.

- **Hung Balconies:** Utilizing stainless-steel cables or rods, these balconies present a stylish, floating appearance ideal for contemporary structures.
 - **Stacked Balconies:** Common in apartment blocks, these balconies share vertical supports across different floors, embodying a traditional design.
 - **Bracket-Supported Balconies:** Relying on brackets or corbels for support, these balconies are directly attached to the building's structure.
- 2. Identifying Damage on Balconies Routine inspections are vital to detect early signs of damage, which vary based on balcony materials.**
- **Wood Balconies:** Watch for rot, insect damage, and warping.



Shown above is rotted wood at a balcony location.

- **Steel Balconies:** Be alert for rust, metal fatigue, and paint damage.
- **Concrete Balconies:** Look out for cracking, spalling, and signs of steel reinforcement corrosion.

3. Repair and Maintenance Schedule

Regular maintenance ensures balcony longevity and safety.

- **Annual Inspections:** Conduct thorough inspections yearly.
- **Immediate Post-Event Inspection:** Examine balconies after severe weather or impacts.
- **Cleaning:** Routine cleaning prevents rot and corrosion.



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4. Material Considerations: Wood, Steel, and Concrete Each material offers distinct advantages and maintenance considerations

- **Wood:** Offers a traditional look but requires frequent maintenance. Wood is sensitive to moisture changes. Cold air can dry out wood, leading to shrinkage and creating gaps. When snow or ice accumulates, the moisture can seep into these gaps, causing rot or mold when it melts
- **Steel:** Highly durable and flexible in design, yet prone to rust. Metal can contract in cold weather, potentially affecting the balcony's structure. Also, metal railings can become icy and slippery, posing a safety hazard.
- **Concrete:** Boasts durability with minimal upkeep but is heavy and demands strong support. Concrete is robust, but not immune to cold. In freezing temps, water that seeps into cracks can freeze, expanding and causing further cracking. Over time, this "freeze-thaw" cycle can compromise the balcony's integrity.

The choice of material and support system, aligned with the building's design and environment, is crucial for balcony safety and integrity. Regular maintenance and prompt damage repair are essential to maintain these spaces as safe, enjoyable extensions of the living area. 🍃



Stacked balconies



Cantilevered balconies with metal handrails



Hung balconies



Cantilevered balconies

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