

Bedbug infestations in attached unit common interest communities are becoming a serious health risk. Condominium boards wonder if a condominium association has any obligations to unit owners as a result of bedbug infestations. Landlords question how to lessen their exposure for bedbug infestations in condominium rental units. The answers are not exactly clear, but condominium associations and landlords need to take action to lower their risk.

The first indication of an infestation may require immediate action. The tenant or unit owner may complain to the landlord or the condominium association. If the occupant complains to public health authorities, bedbug infestations are a violation of health codes so the Health Department will contact the Association and the landlord for correction. The position of the Connecticut Health Departments is that the owner of the building is responsible for extermination. Usually, the infestation is not treated as an emergency and two weeks will be allowed for mitigation. Criminal penalties may be pursued if extermination is not completed.

The association and the landlord should address the bedbug problem before bedbugs take up residency in their property.

#### ASSOCIATION RESPONSIBILITY

A condominium association is generally not responsible for maintaining the interior of units. There are two broad exceptions to this general rule. If a portion of a unit for which Association insurance is required is damaged, the Connecticut Common Interest Ownership makes the Association responsible for repairs. And, if a unit owner or unit is damaged by the Association's actions, the Association's failure to perform its maintenance duties or arises from a condition in the common elements, then the Association could be liable for damage suffered by the unit owner.

An infestation of bedbugs does not normally cause damage to those portions of the Units for which insurance is required, that is, the wall board on exterior walls and structural elements within the Unit. An infestation of bedbugs usually does not arise in the common elements and is not usually the result of the Association's action or inaction. Therefore, the Association should not usually be liable for the infestation. .

Developing case law in New York indicates that courts are finding theories for holding the condominium responsible for extermination and damages. Bedbugs do move through the common elements to infest neighboring units. The only effective treatment for infestations affecting several units would be the co-ordinated treatment of the entire building in which the units are located. The Association is the only entity that could effectuate this treatment. Consequently, if the Association fails to address the infestation, a unit owner may have a cause of action because of the Association's obligations to maintain the common elements and the health and well-being of the condominium community. If the Health Department is involved, the Health Department will look to the Association and the landlord to eliminate infestation.

## CONDOMINIUMS, LANDLORDS AND BEDBUGS

To reduce this potential exposure, the Association should take affirmative action to prevent and eliminate infestations. The Association should first adopt policies to control infestations. The Association should undertake an education program for all occupants. Education and cooperation of landlords is important. The Association must strictly enforce document provisions that prohibit short term rentals, that require written leases and require the Landlord to give tenants copies of the Association documents. The Association should require landlords to provide education material to their tenants . Regular inspection and treatment of the interior common elements would result in early discovery and some control. Many extermination companies will do an evaluation and inspection for free. Bed bug sniffing dogs are effective in locating small infestations, even from hallways. The costs of education, enforcement, inspections and the treatment of the common elements would be a common expense.

The Association must also adopt policies for unit inspections and treatment. Elimination of bed bug infestations requires the cooperation of all residents. Consequently, the Association needs to adopt clear policies and rules regarding bedbugs. The policy should make it clear that the unit owner or occupant is responsible for preventing and reporting bedbugs. If a bedbug infestation does occur, the policy should state that it is the unit owner s responsibility to treat infected personal items and that the unit owner will absorb the costs of replacing the items. The policies should state the Association will undertake extermination in individual units, but that the cost can be assessed back against the individual unit. There should be a mandatory policy for unit owners and occupants to report bedbugs and to be responsible for the costs of extermination in their own units. If a unit owner does not report an infestation and other units and the common elements are affected, the policy should state that the unit owner should bear the cost of the extermination of all affected areas. Exterminators can often trace the path of the infestation. If a unit s infestation can be traced to a particular unit, then that unit owner should be held responsible for all costs. The Association may also adopt rules about general house keeping standards, but these rules may not be easily enforceable because they relate to activities within the unit.

The Association should have strict policies for the removal of personal items from the common elements and procedures for the disposal of contaminated items. All items should be wrapped in plastic before removal and discarded in dumpsters or immediately removed from the property. Discarded items should be marked or damaged to prevent anyone else from reusing the items.

The Association should send notices to all unit owners about the danger of bedbugs and the Association policy for preventing and reporting infestations. Once bedbugs are identified, the Association should have strict procedures for handling the infestation. There should be mandatory inspections of adjoining units and areas. There should be procedures for immediate notification of unit owners in the building. Occupants should be required to permit entry into their units for inspection and extermination and to cooperate fully with the Association, exterminators, inspectors, and health officials.

The Association may also require that units be treated between occupants. All personal

## CONDOMINIUMS, LANDLORDS AND BEDBUGS

items must be removed from units when the units are vacated. Procedures for disposal of personal items during moving should be clear.

Unit owners or occupants who do not follow Association requirements should be heavily fined. It should be clear that anyone who has an infestation and does not report it will be fined and bear the costs of extermination in the unit, the common elements and other affected units. Failure to allow inspections and extermination should have harsh penalties.

With these procedures and requirements in place, it would be hard to argue that the Association was not fulfilling its obligations to unit owners and occupants. With these policies, the Association may also have the opportunity to identify the source of the bedbug infestation and charge the costs back to some units. In addition, if the Association can show that the occupant was the cause of the infestation, the Association will have the defense that the occupant caused the problem, not the Association.

### LANDLORD RESPONSIBILITY.

Bedbug infestations have been found to be an intolerable condition and a basis for a tenant to terminate a lease and to recover damages. The Health Department will make the owner of the unit responsible for bedbug treatment. Tenants can seek damages for loss of property and for personal injury. The tenant will first look to the landlord to handle extermination and to reimbursement for lost items.

The landlord needs to protect the property from infestation, shift responsibility for extermination to the occupant for costs of extermination, and prevent claims for loss of personal property and personal injury. Even though the landlord can not draft away its obligation to provide a habitable rental, carefully drafted lease provisions can be of assistance.

The landlord should first establish that the bedbugs were not a pre-existing condition when the tenant took occupancy. As a matter of course, the landlord should remove all personal objects from the unit between tenants and have the unit treated. The landlord needs to keep careful records of the cleaning and extermination and may consider giving the tenant proof that extermination occurred prior to occupancy. The goal is to take all reasonable measures to deliver a pest free unit.

If during preparation of the unit for a new tenant, the landlord discovers existing bedbugs the landlord could claim part of the security deposit owed to the vacating tenant for costs of extermination. If the landlord can prove that the unit was treated before occupancy, the tenant will find it difficult to recover from the landlord. Even if the infestation was not the responsibility of the tenant and occurred because of conditions in the remainder of the building, the burden of proof should shift to tenant to prove that the tenant did not cause the infestation in the unit. The landlord, however, should reserve the right to perform the inspection and extermination.

## CONDOMINIUMS, LANDLORDS AND BEDBUGS

The lease should clearly state that the unit was delivered in a pest free condition and that the tenant is responsible for the costs of any infestation. The lease should contain a provision that the tenant is responsible for all personal property and for maintaining the unit in a clean, sanitary and pest free condition. The lease could specify that the treatment of any infestations would be at the expense of the tenant. In a condominium, the lease should specify that the landlord is not responsible for infestations from other units or from the common elements.

The lease should require that the tenant immediately report any problems with bedbugs. In the event that the tenant does not and the infestation spreads, the landlord should make the tenant for any costs that are imposed by the condominium association for extermination.

The lease should also contain guidelines for the disposal or treatment of personal items in the event of an infection. The landlord, to prevent costs imposed by the condominium association, may reserve the right to supervise the treatment or disposal of personal items or perform the disposal itself. The provision in the lease needs to clearly state that the costs are the responsibility of the tenant.

If the tenant refuses treatment or does not report the problem, the lease should provide that the tenant's failure to abide by the lease terms or the condominium requirements is grounds for eviction and damages. In Connecticut, notices for failure to abide by the lease terms must be given in writing, with an opportunity to correct, so communications between the landlord and tenant should be in writing and given promptly and properly.

The Landlord should provide the tenants with copies of all condominium documentation and policies regarding bedbugs. The lease should contain a provision that violation of the condominium documentation is the same as the violation of the terms of the lease. If an infestation is reported or suspected, the Landlord should contact the condominium association and take immediate measures, in cooperation with the Association for extermination. It is possible, especially if the landlord receives notice from the health department regarding the infestation, that the health department may require immediate action on the part of the landlord