



TEXAS APARTMENT ASSOCIATION

## **Ebola & Rental Housing in Texas: Frequently Asked Questions**

With several of the U.S. cases of Ebola involving people in apartments, there have been questions about how multifamily operators should deal with the disease. While the National Apartment Association has developed guidance based on information from the Centers for Disease Control and Prevention and other authorities, the following FAQs are focused on state-specific information concerning the TAA lease and Texas law.

### **1. Can a lease be broken if a resident lives at the same property as someone who has Ebola?**

There is no right under the TAA lease or generally under Texas law for a resident to break a lease because another resident has an infectious disease. As a practical matter, in some cases it may be prudent to consider allowing a resident who is living in close proximity to someone who has been diagnosed with Ebola to either transfer units or make other accommodations.

It is possible that a resident may claim under the habitability law under Section 92.052 (a)(3)(A) that there is a condition that “materially affects the physical health or safety of an ordinary resident.” Even under that circumstance, and assuming the resident is correct that proximity to an Ebola victim is such a condition, the owner would have to have received proper notice and had the opportunity to make a reasonable effort to remedy the situation.

### **2. Is it a violation of fair housing law to inquire whether an applicant has traveled to West Africa or been exposed to Ebola?**

Property owners and managers should be mindful of not violating any fair housing protections based on national origin, race, disability or other protected classes.

If a property owner or manager wishes to make such inquiries, the question should be asked of all prospective residents and the property should have a consistent policy for how prospective residents who answer affirmatively are treated. If there is any sort of adverse action based on the answers, such as a denial or an approval subject to conditions, it is possible that the applicant may feel that they are being discriminated against.

If an applicant files a fair housing complaint, the property could potentially assert that the applicant potentially poses a direct threat to the health or safety of others. However, given that a direct threat must be specific and not merely speculative, that defense may be difficult to assert against specific individuals.

**3. Are owners required to disclose the fact an Ebola victim lived on a property to residents and prospective residents?**

The TAA lease and Texas law generally do not require affirmative disclosure of the presence of persons with communicable diseases. However, as in the case of incidents of third-party crimes that occur on a property, it may be prudent to advise residents of the presence of such a victim for a limited period of time after the Ebola-infected resident leaves the property, to minimize resident claims that they may have taken precautionary measures had they known.

In providing any such notice, a resident's privacy rights should be respected by the property owner/manager, even if factors outside the property owner/manager's control, such as a news report, reveals the victim's identity.

Though there does not appear to be any express affirmative duty to disclose the presence of persons with communicable disease on a property to residents or prospective residents, it is possible someone might assert general theories of liability such as negligence. However, such theories require that the actions or inactions of a defendant actually damage the plaintiff, which would seem highly unlikely where properties follow all protocols provided by and cooperate with health authorities.

Also, keep in mind it is not permissible to misrepresent knowledge. In other words, if an employee is asked by a prospective resident if there has been anyone with Ebola who lived on the property and there has been, the employee should answer truthfully (while always preserving confidentiality). Doing otherwise could subject the property to claims based on deceptive trade practices or fraud.

**4. Does Texas law require rental property owners to notify health authorities if the owner learns about an Ebola case?**

Yes. Texas Department of State Health Services rules require any "person having knowledge that a person ... suspected of having a notifiable condition" to notify the local health authority or the Department and provide all information the reporting person knows concerning the illness and physical condition of such persons.

Notifiable conditions include any exotic disease and viral hemorrhagic fevers. Ebola (Ebola Virus Disease) is a type of viral hemorrhagic fever and should be reported immediately by telephone to the local health authority or the Department of State Health Services. Although the regulations do not call for it, prudence dictates that a property document its reporting effort, including by asking the officials contacted for a preferred means by which the report may be memorialized in writing. See 25 TAC 97.1-97.5.

**5. Can owners exclude guests of residents they perceive may pose an Ebola risk?**

Paragraphs 19 and 20 of the TAA lease gives the landlord rights to exclude occupants, guests and others who violate the lease, criminal laws or are a threat to the safety of others. However, keep possible fair housing implications in mind. For example, residents with visitors from West Africa may assert that precluding such visitors in the absence of specific evidence they pose a health risk is discrimination based on race or national origin.

**6. Who is financially responsible for the clean-up and decontamination?**

In the cases that have occurred to date, the government has paid the cost of clean-up and decontamination. However, there is no guarantee that will occur in the future or that the government will not seek reimbursement (see question 7).

Depending on particular circumstances, under the terms of the TAA lease, an owner may be able to seek recovery of costs incurred in clean up and decontamination from residents under one or more paragraphs (12. Damages and Reimbursement; 19. Limitations on Conduct; 20. Prohibited Conduct; 24. Resident Safety and Loss; 25. Condition of the Premises and Alterations; 26. Requests, Repairs and Malfunctions; 28. When We May Enter; 32. Default By Resident; 39. Cleaning; and 41. Security Deposit Deductions and Other Charges).

However, none of these paragraphs specifically speak to decontamination as a result of a communicable disease, and it is possible a court could conclude they do not apply.

Additionally, if a property attempted to assert paragraph 12, which generally makes residents liable for all property damage not caused by the owner, it is possible that a court may find that it is unconscionable for owners to seek recovery from someone who, for example, was exposed to Ebola through no fault of their own.

In any case, safety concerns dictate that cleanup should occur immediately and the owner should pursue any cost recovery later.

Also, it is possible, depending on the specific terms of any commercial insurance policy covering a property that an owner possesses, that the owner may be able to recover costs from its insurer. Owners should consult with their insurance advisers.

**7. What powers do state authorities have to require clean-up and decontamination?**

Depending on particular circumstances, there may be local provisions and various state or federal statutes or regulations not directly or obviously applicable that could come into play.

But owners should be aware that Chapter 81 of the Texas Health and Safety Code specifically covers communicable diseases. The chapter contains provisions that give health authorities various rights to inspect or investigate premises to evaluate the state of a disease. See Tex. Health & Safety Code § 81.061 et. seq.

Health authorities may also impose “control measures” and quarantines to protect the public health under certain conditions. Control measures include, but are not limited to, “disinfection” and “decontamination.” See Tex. Health & Safety Code § 81.081 et. seq.

Texas Health and Safety Code Section 81.084 includes a number of provisions that especially may impact multifamily properties:

- If the Texas Department of State Health Services or a local health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or

contaminated with a communicable disease, the department or health authority may place the property in quarantine to investigate.

- These authorities may require persons who control the property to impose control measures that are technically feasible to disinfect or decontaminate a property found to be infected or contaminated.
- Section 81.084 also provides additional authority to health authorities if such measures are impractical or unsuccessful, including, but not limited to, destruction of the property in a manner that disinfects or decontaminates it.
- Finally, this section provides that the person who owns or controls property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses and that health authorities may charge owners for any control measures their personnel perform.

To date, health authorities have not charged property owners the cost of doing any kind of control measures or decontamination. Should that occur, the property owner may be able to pass the cost along to the resident (see question 6).

**8. Who is qualified to clean up or decontaminate a unit?**

It is advisable that those specifically trained in the handling of Ebola cases handle cleanup or decontamination. This may entail local health authorities providing personnel or referring owners to recommended providers or training materials.

**9. What duties might owners have to onsite personnel in a property where a resident has been discovered to have Ebola?**

There may be other applicable laws, but the federal Occupational Safety and Health Administration has promulgated rules for dealing with biohazards. There are also some state laws and regulations regarding occupational hazards.

Additionally, owners need to be cognizant that various federal laws may limit or preclude medical inquiries of their employees who may have been exposed to an Ebola-infected unit or resident under laws such as the Americans with Disabilities Act.

There could be a need to allow employees time off, as a result of the Family Medical Leave Act. Even laws concerning labor relations such as those protecting employees' "concerted actions" like refusals to service or work in units that may be impacted by Ebola could be implicated. Depending on the circumstances, a couple of additional laws that may be invoked are the Fair Labor Standards Act or the Texas Worker's Compensation Act.

Owners should consult their employment counsel for more details concerning how employee interaction or involvement with Ebola or Ebola-related concerns may trigger any or all of these possibilities.

**10. Where can owners turn for more information from health authorities on how Ebola may be identified, contracted, spread, and treated?**

Centers for Disease Control and Prevention:

<http://www.cdc.gov/vhf/ebola/transmission/qas.html>

Texas Department of State Health Services:

<https://www.dshs.state.tx.us/>

Local health authorities may also have information regarding Ebola. For example, Dallas County's Health & Human Services Department has produced a fact sheet (currently available in 13 different languages):

[http://www.dallascounty.org/department/hhs/ebola\\_languages.html](http://www.dallascounty.org/department/hhs/ebola_languages.html)

It is important to keep in mind that these authorities are constantly updating their resources, and owners and operators should check these resources on a daily basis for updates or changes to the information provided.