

## BED BUGS

### Policy Background

Prevalent throughout the United States prior to World War II, bed bugs became virtually non-existent here and in other industrialized nations during the latter half of the 20th century. This was due in large part to eradication efforts that relied primarily on treating infested spaces with highly effective insecticides, the most notable of which was DDT.

Though DDT was banned in the U.S. in 1972, it wasn't until the late 1990s – with expanded globalization and a corresponding increase in international travel and trade – that bed bugs began to reemerge across the United States.

Given their rapid proliferation and reported presence in all 50 states, bed bugs have become a serious topic of concern in all sectors of real estate, including residential and commercial. Owners and managers of multifamily rental housing face a number of challenges associated with addressing bed bug infestations, including the high cost of extermination and potential legal liability.

Until 2010, state legislative proposals addressing bed bug infestations in multifamily rental housing generally had the single objective of placing the financial burden of eradication squarely on property owners. The New Jersey General Assembly was among the first to introduce such legislation, considering a bill in 2009 that held owners of multifamily rental housing solely responsible for “removing bed bugs at their own expense.” Additionally, it assigned duties to landlords and tenants in cases of infestations. Those provisions required apartment residents who detected or suspected the pests' presence to notify the property's owner. Additionally, residents would be required to comply with eradication protocol established by both the property owner and the designated pest management professional. A resident's failure to comply with these requirements would result in the financial responsibility for extermination costs shifting from the owner to the resident.

New Jersey's efforts subsequently spurred other states to look at the bed bug issue. In total, 20 states and one locality have enacted bed

bug legislation addressing infestations in various places, including apartments, hotels, hospitals and schools. Maine, Arizona, New York and San Francisco, Calif. have laws specifically addressing bed bugs in the rental housing context. Florida also addresses bed bugs in rental housing with a general provision in the law requiring property owners and managers to adopt policies for exterminating pests, including bed bugs.

Maine and Arizona enacted comprehensive, statewide laws that set forth parameters governing owners and residents' responsibilities in addressing the infestations. The Maine statute requires rental housing owners and managers to disclose to potential residents whether units adjacent to those they wish to rent are infested with bed bugs. Arizona's law enumerates landlord and tenant duties regarding bed bug situations while additionally providing legal liability protection for landlords.

New York passed legislation that requires owners of New York City residential rental properties to disclose to potential residents the property's bed bug infestation history for the previous year. The law severely damages the marketability of properties that have been treated for bed bugs, as owners are required to disclose this information even though the bugs have been verifiably eradicated.

The San Francisco Board of Supervisors passed an ordinance with similar disclosure requirements in November of 2012, requiring owners and managers to disclose a two-year bed bug history upon request by prospective tenants. The legislation also mandates that the Department of Public Health collect and disseminate monthly reports from pest control operators about the number of housing units they treated and requires pest control professionals to treat infestations in compliance with regulations drafted by the department, which would certify the treatments within 30 days.

**Apartment Industry Policy:** Bed bugs are introduced to apartments by residents. As such, legislation addressing bed bug eradication in apartments must properly balance responsibility for preventive action and eradication costs between residents and owners.

### State and Local Policy Considerations

- Policies addressing bed bug remediation must be comprehensive, address concerns of all stakeholders and be applied uniformly across all jurisdictions within a state. Apartment owners with properties in several jurisdictions should not be forced to adhere to multiple bed bug eradication standards. Also, policymakers should consider proposals addressing remediation that address the issue uniformly among affected industries. Apartments are not the only type of real estate susceptible to bed bugs.
- Bed bugs do not transmit disease – a fact acknowledged by the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention. Therefore, laws addressing bed bug infestations in apartments should be dealt with in housing and landlord/tenant sections of law, not in public health codes.
- Bed bug infestations have been reported by residents of housing units in all conditions of cleanliness from affordable housing to luxury apartments. Assertions that bed bugs are attracted to filth are patently false.
- The apartment industry supports government efforts to expand public education campaigns concerning bed bugs. The ability to visibly identify bed bugs coupled with a thorough understanding of their behavioral and migratory patterns will help property owners and residents effectively manage and mitigate infestations.
- The apartment industry supports efforts by state and local governments to encourage the EPA to reevaluate the labeling of products that may be effective in eradicating bed bugs. NAA will continue to monitor any such proposals from the EPA to ensure that these policies are favorable to the multifamily industry.
- Owners of apartments located in states where laws addressing bed bug remediation do not exist should consider the inclusion of an addendum to their lease which delineates responsibilities of residents regarding bed bug prevention and remediation.

### Outlook

Without clearly defined statutory parameters, bed bug-related lawsuits involving apartment owners and residents are certain to continue to grow in number as they have over the past few years. Lawyers representing apartment residents in lawsuits against owners regarding these infestations are advancing a variety of legal theories, including negligence, gross negligence, battery, emotional distress, breach of warranty of habitability and overexposure to pesticide.

Legislators at the state and local level are receiving mounting pressures from their constituents to address the bed issue. While bed bug infestations are certainly not confined to residential rental property, the recent developments in San Francisco draw attention to challenges owners of these properties face in combating the issue.

At least 18 pieces of state legislation addressing bed bug infestations in residential rental property were introduced in nine states in 2012. With the passage of San Francisco's bed bug ordinance, NAA anticipates an increase in state and local-level bed bug-related legislative and regulatory action, particularly with regard to multifamily rental housing in 2013 and beyond.

Further, in August 2011 HUD issued guidelines delineating landlord/tenant bed bug responsibilities and protocols within federally assisted/insured properties. HUD later rescinded and reissued the notice after significant input from NAA/NMHC and other multifamily industry groups. Despite vast improvements made to HUD's reissued notice, these guidelines have already affected the legal arena surrounding this issue. NAA will continue to monitor any effects the guidelines may have on state legislation.

### Resources

- **National Apartment Association – Bed Bugs Resource Center**  
<http://www.naahq.org/governmentaffairs/issues/bedbugs/Pages/default.aspx>

Please alert Nicole Upano at [nicole@naahq.org](mailto:nicole@naahq.org) or [government\\_affairs@naahq.org](mailto:government_affairs@naahq.org) if this issue is being addressed in your area.

*Updated December 2012*

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