

## **Warning to California Apartment Owners: Tenant Discrimination Claims Reaching All-Time Highs**

by Stan Dreckman

General Liability Insurance policies have been found to be shockingly inadequate to protect property owners from discrimination, harassment, and wrongful eviction suits by tenants. Although article after article has appeared in 2006 AOA publications regarding discrimination, the majority of rental property owners are still not protected against lawsuits alleging *discrimination, harassment, and wrongful eviction*.

You can be sued for discrimination based upon, **racial, age, religious, gender, national origin, disability, and familial** allegations, among other issues. And, you do not have to do anything different than what you normally do to cause such a lawsuit to be filed.

In spite of the warnings of the potential damages property owners face, most are not protected! Why? Because most property owners assume their regular apartment insurance covers these types of claims. Or, they simply don't know that this protection is affordable and available through credible insurance markets.

If a claim for discrimination is brought against you, what is your first reaction? You turn the claim over to your insurance agent or broker, of course!

Imagine your surprise when, after several days have passed, you receive a letter in the mail from the insurance company's attorney. This letter is informing you that the insurance company "*regrets* it cannot take up your defense in this matter" and that you should "retain your own lawyer to respond to the complaint, so that you will not default on the claim".

### How Could This Happen?

Basically, the General Liability Insurance policy that you purchase (on your commercial and residential properties) responds to acts of your actual or alleged **negligence** that result in ***Bodily Injury, Property Damage, or Personal Injury to Others*** – all as defined under the policy.

***Discrimination and Harassment (and sometimes Wrongful Eviction)*** against Tenants is simply not one of the covered causes of loss (what you are protected against) covered by your traditional apartment insurance package program.

### **“But What About the Property Manager’s Insurance?”**

You may have professional property management in place; of course, you might presume that the management company has acquired this type of protection, but you may be surprised by the answer to that question – many do not carry this protection, depending alone upon their professional skills. And, it is likely you signed an agreement with them to hold the management company harmless for these and other types of actions.

**The Bottom Line:** **YOU** are responsible for defending yourself and paying a claim if allegations of Discrimination, Harassment or Wrongful Eviction are brought against you.

Yet, there is a solution to this dilemma: Now, you can purchase Tenant Discrimination Insurance from nationally recognized experts in the field that have been underwriting property owners and managers for two decades.

With this invaluable protection, you (the policy's Named Insured, Directors and Officers, and Employees of the Insured Organization) can have your costs covered for legal expenses and losses arising from defending lawsuits or administrative claims by tenants or applicants who allege Discrimination or Harassment, on the basis of race, religion, sex, national origin, familial status, or disability, or Wrongful Eviction.

Providing protection to rental property owners or property managers, this Claims-Made Policy's protection is triggered by the filing of a lawsuit by a tenant (or former tenant or applicant) alleging discrimination (on the basis of race, religion, sex, national origin, familial status, or disability), harassment or wrongful eviction.

This incredible policy also protects you from legal actions initiated against you through regulatory agencies responsible for the administration of fair housing laws.

The key features of the **Tenant Discrimination Insurance** policy include:

- Attorneys fees and associated expenses are covered in this policy
- Damages [losses & settlements] are included in your policy limits
- You can purchase up to \$1,000,000 in aggregate limits of protection with small retentions and co-payments.

Tenant Discrimination Insurance provides property owners incredible protection against what is excluded under their regular liability insurance policies: lawsuits by tenants alleging discrimination & harassment.

As experts in residential property insurance issues, we cannot urge you enough to explore this incredible protection plan. This protection can be accessed through most independent insurance brokers.

### Tenant Discrimination Claims Examples

#### No Access Ramp Brings ADA and ADEA Charges

An 85-year-old woman, who was blind and restricted to a wheel chair, had resided in her apartment for 20 years. She requested that an access ramp be built at the front of her apartment building because bus drivers were no longer permitted to physically assist her in getting down the steps and out of the building. Apartment management refused unless the elderly tenant paid for the installation (and possible removal, if she should vacate the apartment), contending that they would then have to build 47 more ramps for each of their buildings. The tenant filed a complaint of ADA and ADEA violations with the metropolitan Fair Housing agency and in civil court. A compromise resolution of the matter was reached and the suit dismissed. The insured was reimbursed for \$13,838 in legal fees. Claim is closed.

#### Disabled Residents File Charges with HUD

Five disabled residents of a Section 8 apartment complex filed charges with HUD alleging disability, age and sex discrimination. The primary spokesperson for the group is a "40-something" year old female amputee who rides a scooter due to her disability and her weight ( $\pm$  300 lbs).

All five women claim that they have been verbally and physically harassed because of their disabilities (visual impairments, cognitive disabilities, epilepsy) by other tenants and by management; that they are discriminated against because of their age (they are younger than the predominantly elderly population of the apartment complex); and several allege that they have been sexually harassed by other tenants but that management refuses investigate or do anything else about their complaints. One of the five has also alleged sex discrimination because another tenant stated she was turning the complex into a "whorehouse" by allowing her fiancé to visit her overnight.

Three of the five women have dismissed their charges in exchange for a waiver by management of its right to file a malicious prosecution action against them. Management is in the process of negotiating settlements with the remaining two women, agreeing to various accommodations including "sensitivity training" for management and tenants alike. The insured has been reimbursed \$28,770 in legal expenses.

#### Plaintiff Charges Neglect of Health Problems

Mother and adult daughter who suffered from a degenerative disc condition shared a second floor apartment. Plaintiffs charge that management failed to respond to their request for the installation of a second handrail in the stairwell to accommodate the daughter's disability, nor was the swimming pool heated or the Jacuzzi repaired so that the young woman could use it for physical therapy in spite of plaintiffs' requests. Plaintiffs also charge that management failed to repair their clothes dryer, to

seal their windows properly, to repaint interior apartment walls or clean carpets, to repair flooding damage to the rental unit, to fix a faulty furnace unit, etc. Finally, plaintiffs charge that management first agreed to permit them to vacate their lease for the aforementioned reasons, then charged them an exorbitant penalty to discontinue the agreement.

The matter was settled and the insured received \$25,472 in reimbursement of legal fees. This insured did not purchase the reimbursement for loss endorsement.

### **Testers" Test Differential Rent Charge Complaint**

A married couple with one infant son complained to the Fair Housing Council that they had been quoted 30% additional rent for a two-bedroom apartment because of their child. In response, the council sent "testers" - investigators posing as married couples with children - to various complexes owned by the property management company to determine if differential rent rates were being quoted to applicants with families.

The resulting lawsuit charges that assessing "unreasonable" surcharges to families with children versus baseline rentals to applicants with no children for comparable dwellings constitutes a discriminatory housing practice. Nearing trial, the parties have begun settlement negotiations. The insured has received \$160,515 to date in reimbursement of its legal expenses.(PI&I)

### **Sexual and Ethnic Complaint Brings Ongoing Complaint, \$18,998 Reimbursement**

Husband and wife plaintiffs have charged the management of their mobile home park with sexual and ethnic discrimination. The mobile home park had been serving the couple with 5-day-pay-or-quit notices for non-payment of rent over a period of two months. The plaintiffs retaliated by filing a discrimination complaint with the State Anti-Discrimination Division just one day after the park served them the final pay-or-quit notice.

Management had received numerous letters from other tenants alleging loud and obnoxious behavior by the plaintiffs, complaining that the couple are abusive and yell obscenities at their neighbors. The plaintiffs have also been caught spray-painting a new property line over their neighbor's grass and plants (by a neighbor who was mowing the lawn at 9:00 pm!) The claim is ongoing and insured has been reimbursed \$18,998 to date.

*Stan Dreckman is an independent agent/broker and author of several articles about important insurance issues. Stan is President of Huggins/Dreckman Insurance Agency, Inc., located in Seal Beach (Orange County), California. He can be reached at 800-400-3224 extension 15. Tenant Discrimination Insurance is a product developed by NAS Insurance Services, Inc. and it is distributed through independent agents.*