

## **Two Ways You Can Be Sued for Discrimination, Harassment & Wrongful Acts!**

### **By Stan Dreckman**

While article after article has appeared in the past two years regarding apartment owners' exposures to discrimination, harassment and wrongful eviction lawsuits from prospective, current, and past tenants (and ways to protect yourselves with tailored insurance programs), it has become apparent that apartment owners are increasingly concerned and unprotected when it comes to their liability exposures to their trusted employees: their apartment managers.

Just as tenants can bring suits against you for discrimination, harassment, and wrongful eviction – and you can protect yourself with a Tenant Discrimination Insurance policy (TDI), your apartment managers can also bring suit against you for alleged discrimination, harassment, and wrongful termination in the course of their employment or termination from employment! This type of claim is similar to tenant discrimination, but it requires a different type of insurance protection: Employment Practices Liability Insurance (EPL).

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.

Many insurance companies are slow to awaken to the need to provide minimal limits of Employment Practices Liability Insurance – and Tenant Discrimination insurance is virtually non-existent in regular apartment insurance programs. If you are lucky, you might have a whopping \$5,000-\$10,000 of coverage for just the EPL (Employment) exposure included in your apartment fire & liability insurance program. So, if you are sued by an ex-apartment manager for wrongful termination, for instance, your basic policy most likely will not respond; if it does, generally it will not pay for much more than a positioning letter from an attorney.

And, what if the Apartment Manager is also a Tenant? The pure Employment Liability (EPL) policies do not provide Tenant Discrimination protection, and the Tenant Discrimination Insurance (TDI) policies specifically exclude employment related claims. So, unless your insurance is properly coordinated, what do you do to protect yourself?

**Three Ways to Protect Yourself from Employment Claims:**

There are three ways to insure this exposure easily:

The first way is to obtain a decent limit of EPL protection through your fire and liability insurance package. As mentioned above, generally these limits are quite low, and these small limits are generally part of an upgraded coverage endorsement that may or may not be automatic.

The marketplace is still somewhat limited as most EPL specialty insurers are not keen on insuring apartment management risks, but there is one insurer of which we are aware – Oregon Mutual Insurance Company (A Rated/California Admitted) – that can provide up to \$1,000,000 in coverage. This will carry a deductible of \$10,000 - \$25,000 each occurrence, but it may be one way to obtain EPL insurance.

This approach will be somewhat hampered as Oregon Mutual, while a competitive Apartment Fire & Liability insurer, is very picky as to what the company will accept; so this approach may not fit your needs. Also, this approach will not address the Tenant Discrimination (TDI) issues, just the Employment issues. So, you are still need of obtaining an additional TDI insurance policy to protect yourself against this exposure.

Another way to obtain Employment Practices Liability (EPL) and Tenant Discrimination (TDI) insurance is to purchase these two policies individually, from the same or different insurers, and not attempt to combine it with your fire insurance policy (as in the 1st method mentioned above). Sometimes, this is the best and only way to do it. The advantage in this method is that you have separate limits of coverage for each exposure (combination policies generally have one limit of protection to cover both exposures).

A third way to handle this exposure – and possibly the best way – is to purchase a combination policy for both the Employment and Tenant issues, and there are few companies who can do this. One company that provides this protection is NAS, an Encino-based managing general agent which provides a Lloyds program.

The NAS program offers an excellent Employment Practices Liability (EPL) policy to which they endorse their exclusive Tenant Discrimination protection (profiled in the March 2007 AOA issue) by simply amending the definition of a wrongful act to include those of Tenant Wrongful Acts. So, you the policyholder – can receive protection for both Employment and Tenant Wrongful Acts, including Discrimination, Harassment, Wrongful Termination, and Wrongful Eviction.

The key features of the combined Employment Practices and Tenant Discrimination Insurance policy include:

Attorneys fees and associated expenses 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. Higher coverage limits are available.

Employment Practices Liability and Tenant Discrimination Insurance policies provide property owners incredible protection against events that are generally excluded under your regular liability insurance policies: lawsuits by employees and tenants alleging Discrimination, Harassment and Wrongful Eviction.

Be aware of your exposures. It is important to check to see if the contract that you signed, as part of your property management agreement to manage your properties, included a hold-harmless agreement with the property managers. If so, you may be in a

position to indemnify them (pay their defense costs and judgments against them) if you have an incident which develops into a lawsuit.

As insurance agents, specializing 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.

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