

PROVIZER & PHILLIPS, P.C.

Contemporary Toxic Tort Challenges for Property Owners and Managers

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Gone are the “good old days” when residential and commercial property owners and managers could expect its liability and litigation headaches to be limited to traditional premises liability claims such as slip and fall claims on ice, snow, slippery floors, cracks and holes or unpaid rent and maintenance hassles.

Today, property managers and owners have to navigate through a variety of complex and often costly toxic tort disputes involving mold, lead paint, asbestos, so-called sick buildings, and now bed bugs.

These claims require a higher level of staff training, specifically developed operational procedures, and careful handling to avoid causing or aggravating a problem and greatly increasing the costs and legal consequences. It is often necessary to retain outside technical consultants and specialty contractors specifically trained in dealing with such problems and the myriad of federal, state and local laws and regulations.

Similarly, it is important to retain and consult with legal counsel who is experienced in dealing with these specialized claims to help coordinate your response and make sure that the legal consequences are minimized.

For example, delays in responding to and remediating water damage from plumbing leaks, overfilled toilets, or roof leaks can result in a much more costly mold problem to fix, generate personal injury claims and bad publicity. Also problematic are attempts to use untrained in-house maintenance personnel to respond resulting in a failure to fully address the water damage and allowing mold to continue to grow or by failing to use proper isolation and remediation procedures in accordance with established industry standards, thereby causing mold to spread and contaminate other areas of the premises and expose workers, tenants and guests. Failure to use licensed and certified people to address lead paint or asbestos in older properties can similarly cause an exacerbation of the problem and lead to legal sanctions, both civil and criminal.

The recent bed bug scourge requires knowledgeable response efforts as many pesticides are not sufficient alone to remedy infestations and a comprehensive multi-faceted response which may include steam and/or dry heat, inspections and isolation may be needed to combat the problem. Certain commonly used remedies such as bug bombs can be counter-productive. They are not effective

and can make tenants and visitors sick.

To be sure, many of these problems are not caused by the owner or managers’ fault or negligence. For example, tenants and acts of God can cause water damage. Bed bugs can infest even the best maintained properties including luxury units. Asbestos and lead may have been incorporated into the building long before the property was acquired. Yet it is how those problems are dealt with after they become known that will determine the legal consequences and costs. Usually, a proactive approach with disclosure to the tenant will be more economical in the long run and establish a positive reputation for the owner and manager. Attempting to hide a problem, delay or cut corners in dealing with it are frequently recipes for costly litigation and bad publicity.

Many of these problems or claims are not covered or excluded by standard liability or property policies making it more critical for owners and managers to control the costs and avoid expensive litigation.

Provizer & Phillips, P.C., has had experience in dealing with complex toxic tort matters for property owners and managers, including pre-litigation counseling, developing procedures to respond to problems before litigation, identifying appropriate technical consultants and contractors, mediating disputes prior to or during litigation, assisting with regulatory and insurance issues, and vigorously defending litigation when needed.

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