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Community Associations Newsletter

Don't Let the Bed Bugs Bite

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The bed bug problem has received a lot of attention in the media lately, both at the national and local levels. As it turns out, Washington, D.C. is one of the top 10 cities in the nation for bed bug infestations.¹ The infestation problem has become so disturbing that the Federal Bed Bug Workgroup convened a national bed bug summit in Washington on February 1-2, 2011. Participants included the Environmental Protection Agency, the Department of Agriculture, the Department of Housing and Urban Development, the Department of Defense, the National Institute for Health, and the Center for Disease Control. Topics discussed during the conference included the importance of educating consumers about the issue and controlling bed bugs in settings such as multi-family housing.

Some community associations have been impacted by the problems caused by bed bug infestations. Given the relative proximity of neighboring properties in

multi-family housing developments, a bed bug problem in one unit can quickly become a problem for multiple units. When this occurs, one of the relevant questions for many associations faced with bed bug infestations will be whether it is the responsibility of the association or the individual unit owner to treat, contain and get rid of the bed bugs. Moreover, if it is determined that it is the association's responsibility, an association will want to know if the expenses incurred in remediating the bed bug problem can be treated as a common expense. And, if an infestation is found among or is determined to have originated in the common elements or common areas, does the association have a responsibility to disclose a known infestation.

Disclosure

Disclosure statements in Virginia must include any special assessments in the current or next fiscal year. Thus, a special assessment related to treatment for any infestation may need to be disclosed. In Maryland and West Virginia, the association must disclose whether or not it has any knowledge of violations of the health code

¹ NBC 4, August 25, 2010,
<http://www.nbcwashington.com/news/local-beat/Good-Night-Dont-Let-the-Bed-Bugs-Bite-101441614.html>

for the unit, limited common elements or common elements.

Common Elements and Common Areas

Whether or not treatment for bed bugs in common areas or common elements is a common expense will depend largely on the association's governing documents or condominium instruments and whether an infestation can be traced back to a responsible party. Determining the source of the infestation may not be easy. In some instances, particularly when an association is alleged to have caused or allowed a bed bug infestation to occur, it may be necessary for an association to retain the services of a third party vendor that is capable of definitively determining the source of the infestation.

The bed bug problem can also arise for an association when a unit owner with a known infestation refuses or fails to take steps necessary to address the infestation. In such cases, the association may need to act quickly to keep the infestation from spreading. The extent and manner of the association's actions will depend on what is and is not authorized under the governing documents or condominium instruments.

Of course, the best way to avoid a bed bug problem is to take steps to prevent an infestation. Moreover, if an infestation is discovered, it should be dealt with properly. The Environmental Protection Agency advises that the following steps be taken:

* Remove clutter where bed bugs can hide.

* Seal cracks and crevices.

* Vacuum rugs and upholstered furniture thoroughly and frequently, as well as vacuuming under beds (take the vacuum bag outside immediately, and dispose in a sealed trash bag).

* Wash and dry clothing and bed sheets at high temperatures.

* Be alert, and monitor areas for bed bugs so they can be treated before a major infestation occurs.

* Before using any pesticide product, read the label first and follow the directions.

* Check the product label to make sure it is identified for use on bed bugs. If bed bugs are not listed on the label, the pesticide has not been tested for bed bugs and it may not be effective.²

If any type of pesticide must be used or applied by the association to treat a bed bug infestation in the common areas or common elements, the association should make sure it complies with its jurisdiction's requirements for providing proper notice to residents about pesticide applications. For example, the Virginia Condominium Act requires condominium associations to post notice of all pesticide applications in or upon the common elements, and that any such notice must consist of conspicuous

² The Washington Examiner, "Bed bugs have come and gone, and well... come again" January 21, 2011; <http://www.examiner.com/ex-offender-re-entry-in-washington-dc/bed-bugs-have-come-and-gone-and-well-come-again>

signs that are to be placed where the pesticide will be applied at least 48 hours prior to the application.

In Maryland, 48 hours' advance notice is similarly required, and such notice must be clearly visible from the principal place of access to the property. Penalties for non-compliance with the Maryland Code may include a \$1,000.00 fine and/or imprisonment not to exceed 60 days.³ In Washington D.C., when a pesticide application is to be applied on a multi-unit property, the pesticide operator must provide each resident and tenant of the property with advance notice either by posting on their door, mailbox or by electronic mail. In addition to such personal notice, 48-hour conspicuous application site posting is required.⁴

Controlling and eliminating a bed bug infestation is important. When it is the association's responsibility to do so, the association should take steps to ensure that it is done properly and effectively. If you have any questions about this issue, please do not hesitate to contact us for further assistance.

³ Maryland Code: Agriculture/Title 5 Pesticide and Pest Control: Sections, 5-208 and 5-211.

⁴ DC Code: Environmental and Animal Control/Title 8 Pesticide Operations: Section 8-403.