

ARTICLE FOR ACTHA NEWSLETTER

‘I am an owner experiencing a bedbug issue. I have had exterminators treat my unit but the problem keeps recurring. I have tried to get our board to have the entire building treated but they refuse to do so. What would you recommend?’

Whether in a landlord-tenant or condominium situation, eliminating bed bug infestation in a building is not the same as exterminating for cockroaches. Has that unit owner taken appropriate steps to eliminate the bed bugs in their own unit? If the bed bugs are still residing in furniture, carpeting, etc. spraying alone won't work. The individual owner must exhaust all steps to kill the critters in bedding, furniture, linens, toys, etc. An exterminator can advise exactly what those steps are.

But assuming that these steps were taken by the unit owner, what exactly is the condo association's responsibility to address bed bugs infestation in the condo building? This is not an area that the courts in Illinois have exactly addressed, at least not yet. But we can look at what the courts and the Condominium Property Act say about Board duties.

Under Illinois law, condominium boards have a duty to maintain the common areas of the building and keep the premises in reasonably safe condition. Although the Board is not responsible for damages within unit, insects do not observe these legally defined boundaries between units, common areas and limited common areas. Since bed bugs can and do move between pipes and other conduits in the walls, which could be common areas or limited common areas, the Board's duty to repair may be implicated. Of course, should it be discovered that the bed bug infestation originated with and was caused by an owner who refused to take action in his own unit, as described earlier, the association may be able to assess that unit owner with the cost of addressing the problem.

The Board of an association has a fiduciary duty to the condominium. What this means is that the Board is bound to act in accordance with its best judgment, applying standards of business prudence and without any self-dealing motivation. The Board must act to protect the financial viability of the condominium as a whole. Certainly it could be argued to the Board that if the entire building becomes infested, the desirability and ultimately, the marketability of all units in the building could be adversely affected.

Could an owner who was unable to sell his unit due to bed bugs claim that the Board's refusal to exterminate was the cause? This damage would be difficult to prove perhaps but the exposure to potential liability should not be ignored.

Similarly, it may seem to be a stretch for an owner to claim physical harm from bed bug bites. However, there is the potential that an owner who suffered a severe allergic reaction to bed bug bites could sue the association in tort (e.g. negligence).

This unit owner could further argue that getting rid of bed bugs requires a building wide remedy which no single unit owner acting alone can effectively address. This is because

the association has the authority under state law to inspect individual units and take other actions in cases where a health or safety emergency exists. Thus, where infestation is found to be extensive, the association is under a duty to act. Failure to act could result in liability to the condominium as a whole and the Board in particular.

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