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Liability Insurance for Your Property

By Andrew J. Wiegel

Most property owners are unaware of the subtle distinctions between the coverage offered by different insurance policies. Many insurance brokers and agents fail to explain these differences.

The cost of litigation is substantial. Even an owner who is wrongly sued by a tenant, and wins vindication through the court, can lose tens of thousands of dollars in the process if there is no insurance coverage.

Most lenders require the owner to maintain a policy of insurance covering the improvements on the property against loss caused by a fire or covered peril. That type of coverage, often called a "fire policy" offers no protection against lawsuits. An owner or property manager also needs liability coverage.

There are two general kinds of liability policy. A basic liability policy only covers claims for "bodily injury" or "property damage" arising out of an "occurrence." While this might seem to be adequate, one should realize that "bodily injury" is carefully defined in a manner which excludes many claims.

"Bodily Injury" does not include intangible or economic harms which are not caused by an injury to the body of the claimant. For example, claims of libel and slander are not covered by this type of policy. More important to property owners, claims for "wrongful eviction" or "invasion of privacy" are not covered by this type of policy. The courts have also interpreted this type of policy to exclude coverage for claims of "emotional distress."

"Bodily Injury" coverage is inadequate for the protection of an owner or operator of multi-unit residential housing, or anyone contemplating an eviction. Additional coverage specifically insuring against claims of "wrongful eviction" should be obtained.

Wrongful eviction insurance can be provided either by policy endorsements specifically adding the additional coverage to a policy or by a broader comprehensive general liability insurance policy.

"Wrongful eviction" coverage is usually found within the definition of "personal Injury" under insurance policies state that they cover personal Injury as well as the usual bodily injury. In the definitions section of the policy, "personal injury" is often defined as including "wrongful entry or eviction or other invasion of right to private occupancy." Look for this language in the liability section and definitions section of the policy.

The phrase "other invasion of the right to private occupancy" does not exist in all "personal injury" coverage. However, it is an important element of coverage for a landlord in rent control jurisdictions such as Oakland or San Francisco, because of the potential liability created under the local rent control ordinance. A rent control ordinance adds another layer of complexity of the legal relationship and procedural requirements of the landlord-tenant relationship. In order to successfully raise rent, evict a tenant or manage an apartment building, an owner must comply with the ordinance. Even an innocent "technical" infraction can result in a lawsuit by a tenant against the owner.

Under some rent control provisions, a landlord can be sued by a tenant for the mere attempt to evict, even the attempt to negotiate without any eviction notice. If the attempt is unsuccessful, some insurance carriers, whose policies lack this critical coverage for "invasion of right to private occupancy," will refuse to defend the resulting suit because no "eviction" occurred.

The actual text of the entire insurance policy must be scrutinized to ascertain whether the desired coverage really exists in the policy. Even where the policy includes "personal injury" coverage, the further requirement of an "occurrence" can be used to deny coverage for tenant claims.

There are many different liability provisions in the insurance industry, including different definitions of an "occurrence." In some policies, an occurrence must be an accident, and only an accident. Some insurance carriers, whose policies require "an accident" for coverage to apply, may refuse to defend you from any wrongful eviction suit based on an eviction notice or attempted negotiation. We have seen letters from companies issuing these policies, including Allstate, claiming that the "wrongful eviction" insurance does not cover a claim resulting from service of an eviction notice because it is not "an accident."

Other insurance policies define "occurrence" as including an act or series of similar acts which result in a covered "personal injury." Since this definition does not require an accident, it does not defeat coverage. But all policies include an exclusion of coverage for deliberate and intentional wrongful acts by the insured. Even with the better definition of occurrence, coverage may be denied unless the owner proceeds with a good faith belief that he is following the law.

The liability limits which are included in the policy for a particular building may not be high enough to offer adequate protection. We recommend obtaining liability coverage limits of at least two million dollars under an excess or umbrella liability policy. Your total liability protection should be increased to a figure adequate to protect your assets.

With insurance companies facing financial challenges, it can be hard to get coverage for some properties. You may be offered coverage from a “non-admitted” or “surplus lines” carrier. These terms refer to insurance companies which do not qualify as “admitted” carriers for CIGA, the California Insurance Guaranty Association. CIGA provides a pool of funds to reinsure losses covered by “admitted” carriers which become insolvent. “Non-admitted” or “surplus lines” carriers do not offer that additional layer of protection from the insolvency of the insurance company.

No insurance coverage will protect you from claims for punitive damages, or breach of contract and no insurance coverage will pay for your eviction of a tenant. It is important to read your policy carefully and recognize the limitations of the protection you receive.

Andrew J. Wiegel is a partner at Wiegel & Fried, LLP. The information contained in this article is not intended to be exhaustive - instead it is provided to inform the real estate community of some important features of California law. The information in this article is general in nature; consult with an attorney for legal advice on any particular matter. © Copyright 2004, Wiegel & Fried, LLP.