

Hopkins • Tschetter • Sulzer  
Attorneys and Counselors at Law



# Landlord News

3600 South Yosemite Street Suite 828, Denver, Colorado 80237

htsnews@htspc.com

www.htspc.com

Denver Phone 303.766.8004

FAX Completed Eviction Forms To: 303.766.1181 or 303.766.1819

Colorado Springs Phone 719.550.8004

FAX Completed Eviction Forms To: 719.227.1181

## NEWS FROM THE BED BUG BATTLE FRONT

One of the things I enjoy the most about being an attorney is that I constantly get to learn about new subjects.



However, I would have never guessed that my legal career would result in substantive knowledge of bed bugs. Because bed

bugs continue to be problematic for the industry, we spend a lot of time discussing bed bugs with our clients. We also spend a lot of time dealing with experts involved in the bed bug industry. Unfortunately, we also spend a lot of time defending clients in court on bed bug cases. This month, we chronicle what we have learned from our recent bed bug experiences.

First and foremost, judges do not like bed bugs. Even very conservative judges have little tolerance or sympathy for landlords and property managers when they determine a bed bug situation has not been handled correctly, and most importantly, diligently. Because different judges interpret the law differently, sometimes the outcome of a given situation depends on the judge.

Not so with bed bug cases. All judges will rule in favor of the resident if they determine you have dropped the ball in dealing with a bed bug



situation. Thus, regardless of your community's location, your bed bug policies and response are the decisive factors in determining legal outcomes.

Disclosure is the first key component to any comprehensive bed bug policy. If you have had recent bed bug problems and you fail to disclose them to prospective residents, you will have some explaining to do to the judge.

**CONTINUED ON PAGE 2**

## ¿Hablas español?

In our ongoing commitment to provide the best services to our clients, HTS has added a new member to the team in the person of Cecilia Gowins, who will serve as a bilingual translator/instructor for the Firm's Fair Housing programs. A native of Peru, with a strong bilingual education, Cecilia became a translator and teacher after emigrating to the U.S. over twenty years ago. While employed by a translation company she developed educational programs to teach Medical Spanish to doctors and nurses and worked with them onsite translating for patients. More recently she worked as HR Manager for Chipolte, joining the company when there were only two restaurants, and was part of the management team that helped them grow to over 400 facilities nationwide. While at Chipolte, Cecilia travelled around the country giving presentations to Spanish speaking employees, as well as developing and translating all of the teaching materials used by the company.



Cecilia is excited about the challenge of translating HTS Fair Housing workshops and is looking forward to having the opportunity to provide our Spanish speaking clients and their employees with the chance to educate themselves on a law that is so important to the rental housing industry. She has expressed her enthusiasm for utilizing her skills to present materials to a large group of clients that would otherwise be unable to experience and benefit from the educational programs our Firm takes so much pride in. In addition to translating the class materials, she will be present at all of our bilingual classes to interpret the material for the attendees and translate their questions for the attorneys. Cecilia and the HTS team are working diligently on creating our Spanish Fair Housing programs. Look for the announcement on the date of the roll-out of the classes coming soon.

## NEWS FROM THE BED BUG BATTLE FRONT

CONTINUED FROM PAGE 1

Because disclosure affects leasing, obviously no one wants to disclose a bed bug problem. However, failure to disclose can significantly impact your chances of winning



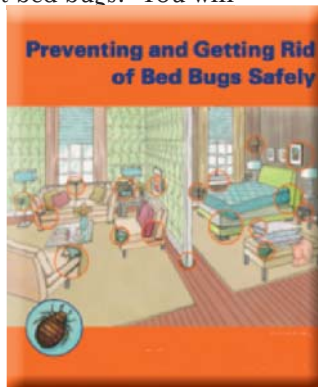
in court. If your community has had a recent severe infestation, a failure to disclose means losing the case before the trial has started.

Because there is a no one-size-fits-all disclosure rule, the nature and extent of your disclosures depends on the severity of your bed bug problem and how recently it occurred. If you have a severe problem (the recent treatment of multiple units, or a total outbreak), you should specifically disclose this accompanied with a statement that the problem was treated.

If you had one isolated case two years ago, the court may not penalize you for non-disclosure. However, even if you have never had a bed bug problem you should consider making a general disclosure to guard against future outbreaks. For example, bed bugs are a very common problem throughout society. A surge in global travel and mobility, combined with changes in pesticide use, including the banning of DDT created optimal conditions for the revival of bed bugs, which had been virtually dormant since World War II. Exterminators have treated maternity wards, five-star hotels, movie theaters, banks, private schools, apartment communities, private homes, and countless other places. Accordingly, nearly every apartment community either has or will likely experience some level of bed bug infestation.

Similar to disclosures, judges frown on a lack of protocol, or if such protocol is not distributed to residents. One thing is certain about bed bugs. You will never effectively eradicate them with traditional chemical treatments unless your residents actively cooperate in treatment efforts. However, it is not enough to request their cooperation. You must be able to prove to the court that you have a standard protocol, and the protocol was distributed to the residents in order

to maximize the chances of successful eradication. Standard protocol includes the residents being prepared, e.g.



moving furniture, and picking up clothes, so that treatment can be effective. Standard protocol also includes the residents washing all linens and clothing in hot water. A more detailed protocol is set forth in our Pest Control Addendum on our website.

If a resident reports bed bugs, how you deal or don't deal with surrounding units is critical. Some of the cases we have recently defended dealt with surrounding units. The surrounding resident was not the initial problem, but the surrounding resident's unit eventually became infested. Thus, if a resident reports a bed bug problem, you should always inspect all surrounding units, and in most cases treat all surrounding units. If you fail to treat surrounding units, you may have saved the community some money in the short run by avoiding the extra treatment cost. However, failure to treat surrounding units will almost certainly result in the bed bugs spreading and ultimately costing the community thousands in the long run. Further, treatment of surrounding units with no reported problems is strong evidence of your good faith and dedication to diligently addressing bed bug problems.

Unbelievably so, some residents will either not

have followed or flat out refuse to follow necessary preparation and follow-up protocols. For this reason, many clients pre-inspect units to be treated to



verify preparation protocols have been followed. However, it is not good enough to pre-inspect. You must also document any failures, and ultimately evict non-complying residents. Your onsite team should do the pre-treatment inspection with your vendor, and for each unit not ready, should list the specific reasons why the resident was not ready, and take photos. Non-complying residents should be promptly warned and then served with a demand for compliance or possession, and evicted if non-compliance continues. Better to evict one resident, than to have your entire community infested. The one exception to this policy is that you have a legal duty to consider a reasonable accommodation for disabled residents that cannot follow protocol because of their disability. Train your staff to be on the look out for this request.

Your policy should be consistent and unwavering, and you should consider publishing it in a Pest Control Policy Memo. The memo should address the key points of your policy and the applicable lease provisions. For

**CONTINUED ON PAGE 3**

## NEWS FROM THE BED BUG BATTLE FRONT

### CONTINUED FROM PAGE 2

example, as stated in your pest control addendum, you have a duty to cooperate with all pest control efforts, and if you don't you can lose your right to occupy your unit. If we provide you notice of treatments, and your unit is not ready you will be issued a warning letter for the first violation. If we provide notice, and your unit is not ready a second time, you will be served with a legal demand for compliance, and you will be liable for associated costs. This doesn't have to be the exact policy, but you need a policy so there is no discretion, and it needs to be consistently followed.

You should also consistently evaluate the effectiveness of your pest control vendor. Based on extended discussions with clients, industry professionals, and various pest control professionals, the effectiveness of pest control treatments provided by various vendors can vary greatly. The recurring theme we hear is that like most things in life, you get what pay for. Low cost pest control vendors are low cost for a reason. Generally, cut-rate pest control vendors provide inferior service and use inferior treating products. The staying power, or rating of chemicals used in bed bug treatments can vary from weeks to months. Some treatments will continue to kill



bed bugs for two weeks while some treatments claim to kill bed bugs for up to six months, or longer. Bottom line, while there are many reputable vendors, don't assume your vendor is serving your property's best interest. If your vendor has proved ineffective, retain a new one. You should also ask your vendor what products that they are using, what evidence do they have that the particular products are effective against bed bugs, and the length of time that the product will continue to kill bed bugs.

You should also take the time to specifically review your vendor's treatment protocols. Have a member of your team observe your vendor at work. Don't assume the vendor is treating the entire unit. Many landlords have been surprised to learn that the vendor was not treating the bathroom, or the kitchen of a unit. While obviously these are sensitive areas to treat with chemicals, whether to treat these areas should at least be evaluated. After all, isn't any area where you live a sensitive area? Similarly, is the vendor removing wall-plate covers and switches? Is the vendor treating behind walls? Drilling

small holes in walls and treating can be especially important in vacant units. Surprisingly, vacate units can be the most difficult to treat. Bed bugs can go dormant and live for months in a dormant state. When a unit is vacant, bed bugs tend to recede into the walls through wall-plates, switches, or other small openings, and go into hibernation.

For severe situations, you should consider evaluating alternative eradication strategies. Dogs have now been trained to detect live bed bugs and their eggs. One large national pest control provider has confirmed that dogs can be effective if properly trained. The problem we have always had with a bed bug dog is how to effectively, consistently, and cost effectively deploy the dog as part of an ongoing comprehensive eradication strategy. In other words, if you have a large portfolio, deployment of the dog would not be cost effective. Assuming you decided to pay for the dog, the dog probably couldn't be everywhere it needed to be. However, a bed bug dog seems to have significant value if the dog is used to selectively target eradication efforts, or to confirm whether eradication efforts have been successful. A dog would also be very valuable to inspect the property of residents moving in to make sure they were bed bug free. Unfortunately, while possible, this use of a dog is simply not practical, unless you want to pay the \$10,000 cost to train a dog for each of your communities.

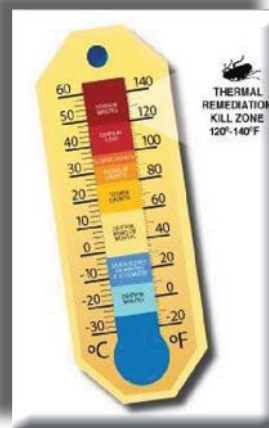


Heat treatments are alleged to be a cutting edge technology to eradicate bedbugs. Bed bugs, or their eggs cannot live above one hundred and fifteen degrees.

The procedure is to heat the interior of the infected unit to well above one hundred and twenty degrees, and keep it at that temperature for several hours. While we don't know the cost, heat-treating equipment can cost over \$200,000. Thus, we assume that heat treatments of individual units are not a cheap treatment alternative. Additionally, some clients

have reported that heat treatments proved unsuccessful. However, recently we have heard other reports that heat

**CONTINUED ON PAGE 4**



**NEWS FROM THE BED BUG BATTLE FRONT**  
**CONTINUED FROM PAGE 3**

treatments are effective. The proponents of heat argue that heat treatments only fail when they are done improperly. One huge advantage of heat is that it requires no resident cooperation. If heat ever proves to be a viable and cost effective technology, this would be a huge advantage. The bottom line on heat is that that jury appears to still be out. However, given the desperation of some owners and managers, and the emergence of heat as an eradication procedure, the final verdict on heat probably will be in within the next year.

In court, bed bug cases are all about diligence. What hurts you the most is a lack of, or a perceived lack of diligence in addressing bed bug issues. What helps you the most is strong evidence of your unwavering commitment to eradicate the pests. If you get on a bed bug problem and stay diligent in addressing it at all times, you will have greatly enhanced your chances in prevailing in a bed bug case.

**h h h h h**

**IMPORTANT HTS JUNE DATES**

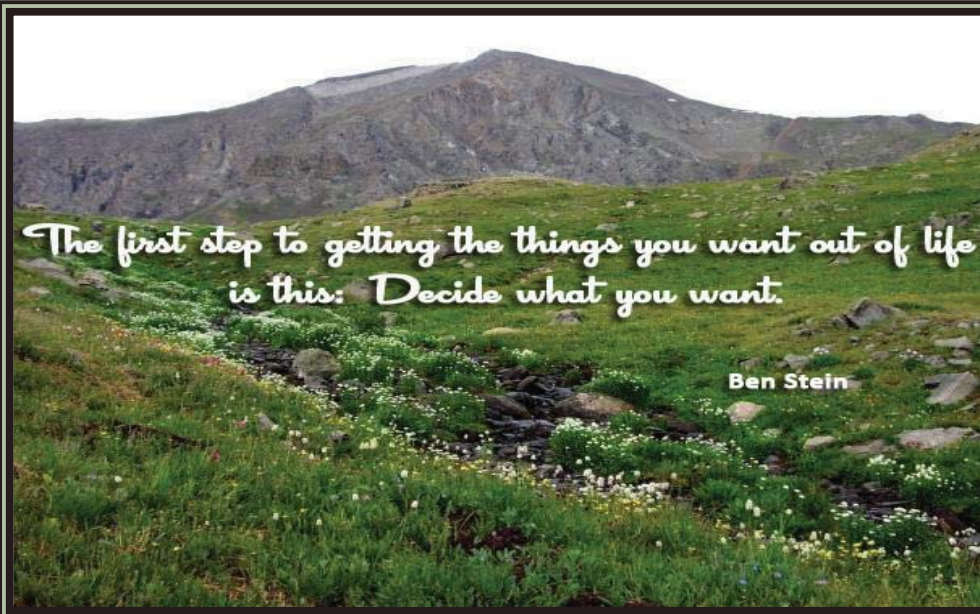
June 8th	Basic Evictions City of Fort Collins 215 Mason St. Fort Collins, CO 8:30 a.m. - 11:30
June 16th	Basic Evictions HTS Lower Conference Center 3600 S. Yosemite Street Denver, CO 8:30 a.m. - 11:30
June 17th	Colorado Springs Client Lunch The Ritz Grill 15 South Tejon Colorado Springs, CO 11:30 a.m. - 1:00 p.m.
June 18th	South Client Lunch Dave & Busters South Colorado Blvd. 11:30 a.m. - 1:00 p.m.
June 29th	Collections/Landlord Recovery AASC Colorado Springs 2790 N. Academy Blvd Suite 227 8:30 a.m. - Noon



**HAVE YOU REMEMBERED  
 TO MAKE  
 YOUR RESERVATIONS  
 FOR THE AAMD  
 JUNE AWARDS DINNER  
 JUNE 17TH, 2010  
 CALL THE AAMD TODAY**



**Flag Day June 14th 2010**



*The first step to getting the things you want out of life is this: Decide what you want.*

**Ben Stein**