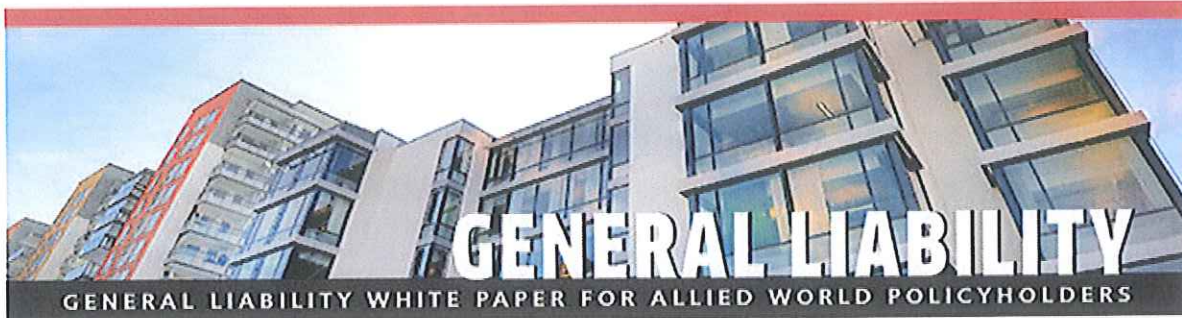




RISK MANAGEMENT



April 2016

Unauthorized Occupants in Multifamily Housing

An original General Liability white paper on **Unauthorized Occupants in Multifamily Housing** is now available to Allied World General Liability policyholders. Written by Joel R. Davis, JD, President at Great Prairie Risk Solutions, Inc. with Thad Whittier, CIE of AWAC Services Company, a member company of Allied World, serving as contributing editor, this white paper is intended to illustrate recurring fact patterns where unauthorized occupants utilize their presence on the property to carry out criminal activity. It will also address the associated consequences and impacts, as well as the best practices to mitigate risk.

> [Click here to download your copy of this General Liability white paper.](#) <

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GENERAL LIABILITY

GENERAL LIABILITY WHITE PAPER FOR ALLIED WORLD POLICYHOLDERS

April 2016

UNAUTHORIZED OCCUPANTS IN MULTIFAMILY HOUSING: THE FACT PATTERNS, EXPOSURES, AND BEST PRACTICES TO MITIGATE NEGATIVE OUTCOMES

It happens all too often in the apartment sector of real estate – management receives an incident report or letter of representation from an attorney involving a criminal or sexual assault at one of the apartment communities within the portfolio. At first glance, the occurrence appears to be an unforeseeable act, without notice. The perpetrator was the guest of a resident. How could management have foreseen, let alone prevented, this from happening? After a bit more investigation, the facts reveal that the perpetrator had been residing on the property for an extended period of time, without the resident notifying management pursuant to the terms and conditions of the lease agreement. Again, a sigh of relief from management – a contractual defense to any claim being asserted.

This white paper is intended to illustrate recurring fact patterns where unauthorized occupants utilize their presence on the property to carry out criminal activity. It will also address the associated consequences and impacts, as well as the best practices to mitigate risk – not necessarily avoid risk.

FACT PATTERN NUMBER ONE - THE BOYFRIEND

A longstanding female resident of an apartment community has been dating a man for several months. The boyfriend has been seen at the fitness center and pool area day after day with (and without) the resident. He parks his unregistered vehicle in the parking lot night after night. He has been known to drop off rent payments from time to time. He also retrieves mail from the mail center and has been known to do laundry on the premises. For all intents and purposes, this man is living at the apartment community. One night, the resident and the boyfriend have an argument and he leaves abruptly. After hours of drinking at a local pub, the boyfriend returns and enters the apartment community through the access gate with a key card obtained from the resident's unit. The boyfriend notices two other female residents returning home after a night out and follows them to their apartment. Just as they close their door, the female residents are face to face with the enraged and intoxicated boyfriend who sexually assaults both of them at knifepoint.

The exposure to the apartment community starts the next morning with media coverage of the occurrence. Initially, the perpetrator remains unknown to law enforcement. The victims retain counsel and within weeks the boyfriend is arrested. DNA matches him to the occurrence. The attorney emphasizes the perpetrator's time on the property and exploits management's inaction, through use of the media, to remove him as an unauthorized occupant. Next, resident retention and prospective tenant traffic drops. Management is hard pressed to enforce early termination fees for fear of additional negative media attention. For months to come, the apartment community is the black sheep of apartment housing in the area, and the financial impact doesn't stop there.

FACT PATTERN NUMBER TWO - THE BEST FRIEND

A relatively recent male resident of an apartment community is approached by his best friend to help her following an altercation with her parents. She needs a place to stay while she gets her life together. The resident accommodates her with open arms and she moves into his apartment. She has a 9 to 5 job and no car. She has been living at the resident's apartment for weeks and is periodically seen by neighbors and maintenance personnel coming in and out of the apartment. She even submits a work order request to maintenance during her stay. One night, she notices a convertible at the apartment community with the top down. A ladies handbag is observed in the back seat and she takes it. At the same time, the owner of the convertible comes back to retrieve the handbag and confronts the unauthorized guest. An altercation occurs and the owner of the convertible sustains a severe head injury.

FACT PATTERN NUMBER THREE - THE UNAUTHORIZED SUBLEASE FOR FINANCIAL GAIN

Two male residents have resided at their apartment community for several years. They are avid sports fans and live blocks away from a prominent major league baseball team. Year after year, the residents offer their apartment to the highest bidder during the playoffs for amounts significantly higher than their monthly rent. Management has been aware of this practice due to noise complaints in the past, but management only issued warning notices to the residents due to their overall positive residential history. One year, a party held during the playoffs by unauthorized occupants goes horribly wrong and a guest is shot. The residents are staying with a friend (off premises) when the unfortunate event occurs.

Once again, exposure to the apartment community starts the next morning with media coverage of the occurrence. Initially, the perpetrator remains unknown to law enforcement. The victim retains counsel and within days, the perpetrator is arrested. The attorney emphasizes management's failure to evict the residents before this unfortunate occurrence.

MITIGATING THE RISK - BEST PRACTICES TO REDUCE EXPOSURE TO THESE TYPES OF LOSSES

In each of the fact patterns presented above, management had actual and/or constructive knowledge of individuals residing at the apartment community who were not on a lease. At the time, it may not have seemed significant to management. These types of incidents formed the basis for liability against the management company and/or the property owner – not the individual residents.

We cannot expect onsite personnel to always know who is (and is not) lawfully on the premises. We can expect onsite personnel to be proactive in the fact patterns presented above and challenge individuals

to provide support as to why they are at the apartment community. For instance, vehicle checks (for vehicles without stickers or validation) would result in notices and towing of cars belonging to individuals not lawfully on the premises. Periodic questioning of individuals not known to onsite personnel, but routinely seen in public areas of the property, would reduce the number of unauthorized occupants. More stringent enforcement of lease violations (unauthorized sub-leases) would eliminate future occurrences that create liability for the management company and/or the property owner. Keeping an open eye and monitoring the property more closely will mitigate the risk of third party criminal occurrences.

In sum, the following actions by onsite personnel will help to reduce the likelihood of unauthorized occupants at apartment communities:

- More frequent vehicle checks with notices and towing of unauthorized vehicles.
- More frequent questioning of people routinely seen on the premises, but not known to be residents by onsite personnel.
- More stringent enforcement of lease violations, especially involving unauthorized sub-leases.
- A heightened awareness by onsite personnel of activity within apartments and common areas, particularly by maintenance personnel responding to work orders.

The ultimate goal in these situations is to mitigate or reduce the risk of these occurrences.

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