



# UPDATE

*The Voice of the Washtenaw,  
Livingston, Monroe, and  
Lenawee County's Rental  
Housing Industry!*

Volume 25, Issue 8 — November 2009

Always available at [www.wa3hq.org](http://www.wa3hq.org)

## Bed Bug Hysteria

By Michael D. Crow      Bed bug infestations are increasing at an alarming rate. Complaints of bed bugs (*cimex lectularius*) in hotels, apartments, hospitals, dormitories, theaters, schools and nursing homes are becoming commonplace. Not surprisingly, lawsuits arising from such complaints are also increasing.

According to the New York City Department of Housing Preservation and Development, bed bug complaints increased 400% between 2005 and 2008. The New Jersey legislature recently introduced Assembly Bill 3203, which cites a 500% nationwide increase in bed bug infestations. There is little dispute these parasites are fast becoming a significant problem in the United States.

Media exposure surrounding these cases is causing a ripple effect throughout the country. Aggressive plaintiffs' lawyers are sensing a lucrative opportunity. Attorneys are creating websites and sending unsolicited mass mailers focused on bed bug litigation. A dramatic increase in bed bug litigation is almost a certainty over the next few years.

In 2003, the Seventh Circuit of the U.S. Court of Appeals upheld a verdict of \$377,000 in favor of the plaintiffs, who were attacked by bed bugs while guests at a Motel 6. In 2004, Helmsley Enterprises reportedly paid a guest \$150,000 to resolve a bed bug claim. Finally, in 2004, a New York judge ruled in favor of a frustrated tenant, who refused to pay rent for a six month period because of persistent bed bug problems.

For the most part, plaintiffs' attorneys are citing two causes of action in

filing bed bug claims: a standard negligence claim and a statutory claim under a state's Landlord-Tenant Act.

In Michigan, MCL § 125.474 states, "The owner of every dwelling shall be responsible for keeping the entire building free from vermin." Several Michigan cases have held that a violation of MCL § 125.474 constitutes "negligence per se." Subsequent cases, however, make it clear that violation of a penal statute merely makes out a rebuttable presumption of negligence, and the violation is not conclusive in and of itself. Furthermore, Michigan's Landlord-Tenant Act, MCL § 554.139, requires that the premises be fit for the use intended by the parties, be kept in reasonable repair and comply with the state's health and safety laws.

There is no case law in Michigan with regard to bed bug litigation and the standard of care of a premises owner. To complicate matters, bed bugs are unique and different from other vermin which often wreak havoc on a property owner. Rats and cockroaches are often attracted by unclean conditions, while bed bugs can infest the most pristine properties. Furthermore, bed bugs are often brought into the premises by the residents themselves. Finally, at least in the apartment complex scenario, the tenant is responsible for keeping portions of the property clean and in good repair.

In a recent spider infestation case, the Michigan Court of Appeals addressed the application of the Michigan Landlord-Tenant Act. Ultimately, the Michigan Court of Appeals ruled a spider infestation did not make the premises unfit for their intended purposes, nor was a repair issue identified. Thus, the landlord did not violate the Landlord-Tenant Act. Therefore, plaintiffs' attorneys in Michigan are likely to focus on MCL § 125.474 and negligence claims in prosecuting their bed bug

*(Continued on page 3)*

## EPA's New Renovation, Repair and Painting Rule: Will You Be Ready to Comply?

**By: Jack Anderson, CONNOR,  
Baltimore, Maryland**

The US Environmental Protection Agency's Renovation, Repair and Painting Rule will become fully effective and enforceable on April 22, 2010.

The Rule will impact a substantial number of firms and individuals, including professional residential real estate managers and residential rental property owners, and create new regulatory requirements with which they must comply.

### Basics of the Rule

The Rule applies to all "renovations" (which is broadly defined and includes typical maintenance activities) performed for "compensation" in pre-1978 "target housing" and in pre-1978 "child-occupied facilities" (e.g., daycare centers). The Rule's requirements are generally triggered when paint (including shellac, stain and varnish), which has not been certified as being lead-free, is disturbed by any renovation, repair or painting project. Owners and occupants of target housing and child-occupied facilities must receive information on lead-based paint hazards before these projects can begin. Also, certain lead-safe work practice standards must be met during the work and a "cleaning verification" must be conducted before the work area can be reoccupied. Finally, certain work records must be created and maintained for no less than three years.

"Firms" performing these renovations must submit an application and fee to become EPA certified. Further, individuals who work for Certified Renovation Firms must be properly trained and EPA certified as "Renovators" or be trained and supervised on the job by Certified Renovators. EPA conservatively estimates that 210,000 organizations (many of which will be third-party property management companies and

*(Continued on page 5)*



Ask me about the 2010 NAA Education Conference & Exposition!  
June 24-26, 2010 | New Orleans, LA | [www.naahq.org/educonf](http://www.naahq.org/educonf)



## President's Message:

It's hard to believe that fall is already here considering the summer we had, or should we say lack of summer! With the students back and settled in, the pre-leasing for the fall 2010 is starting. For the second year, the Washtenaw Area Apartment Association will be hosting a housing fair. This will be held at the University of Michigan Alumni building. If you haven't signed up, we strongly encourage you to do so. Last year was a huge success and we anticipate that this year will be as well.



By the time this is received, we will have already had our maintenance appreciation luncheon at Creekside. I would like to extend our thanks to all of the "behind the scene's" people. These include the maintenance, grounds, housekeeping and our subcontractors. Without these people available to assist us in our day-to-day operations, none of us could be as successful as well. A BIG THANK YOU!

Coming up with be the GLAStar Awards in Lansing. We wish all of our local properties that have entered good luck. This is quite an amazing event and a fun one as well. There are people throughout our industry who receive awards and are recognized for the hard work and efforts. In addition to the awards banquet there are wonderful education classes the day before. If you haven't signed up to attend, please do.

By: Kelly O'Donnell

## EO Message

This month's issue is focused on upcoming regulations. Of particular is the article on the new EPA Lead Based Paint Renovation Ruling that is going to be required of all those working on buildings older than 1978. Please read the article to determine if you must comply with this regulation. The Education Committee is in the process of scheduling a class locally at Cleary University in the first part of next year to get all of your employees and vendors trained to work under the new regulation. It is a one day training class and we are looking at pricing from \$100 to \$200 per student. Please get this in the budget after reading the article.

The second regulation is the R410 Refrigerant requirements. We had one safety training class in October and intend to offer more if there is a need among our members. Please call the office if you did not get in the first class. With enough interest we will schedule another at a later date.

As always, there is an ongoing problem with Bed Bugs. Continental Management has shared with us their full compliment of Bed Bug forms for all of you to use that ask your residents to agree to participate in the eradication schedule you set up with your vendor. (See the website for member vendors please). Just call or email for the actual forms to use on your properties and houses.

Hope to see you all at the Annual Meeting...Alice

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**Deadline:** 15th of the month for next month's publication to [newsletter@wa3hq.org](mailto:newsletter@wa3hq.org). Submit all materials to Alice Ehn, Executive Officer

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**National Apartment Association** - 4300 Wilson Blvd, Suite 400, Arlington, VA, 22203 - 703/518-6141, FAX 703/248-9440 - [www.naahq.org](http://www.naahq.org)

**Education Trade Expo and  
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Weber's Inn  
Cost per Table: \$235  
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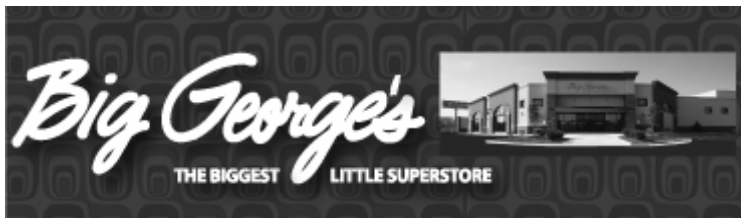
# Bed Bugs con't:

(Continued from page 1)  
cases.

Most likely, both the negligence and statutory claims will turn on whether the property owners were reasonable. In other words, did the property owner perform proper inspections to obtain early recognition the problem exists, and, once the problem was discovered, whether the property owner was reasonable in remediating the problem. The strength of such a defense will turn on whether a proper pest management program was created and followed by the landowner.

For the most part, the basic bed bug claim consists of three elements: property damage, physical pain and suffering and emotional pain and suffering. If properly treated, most personal property can be salvaged. Regarding physical pain, bed bug bites leave red welts on the skin, which often itch. Obviously, this does not cause significant discomfort. Bed bug bites, much like mosquito bites, can lead to infections and scarring, but these cases are incredibly rare.

The real issue in these cases, therefore, lies in the sheer number of potential plaintiffs and their emotional damages claim. The thought of blood-sucking insects scattering through one's apartment or hotel room is enough to make one's...well...skin crawl. Depending on the owner's reaction to the infestation, a jury may, legally or not, render an award which is punitive in nature. Couple a well manufactured damage claim with an unresponsive landowner who ignores complaints for the sake of bottom line profits, a defendant's exposure can become explosive. Depending on the number of potential plaintiffs, financial damages can quickly get out of hand.



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## SECRET WARDLE NOTES:

Upon receipt of a claim, the claims handler must encourage the insured to institute an aggressive pest management plan. In doing so, the claims handler should ensure proper documentation is maintained by the insured. Documentation of preventative inspections, initial complaints, remediation attempts, follow-up inspections and all continuing complaints should be maintained. In addition to limiting the potential damages from a continuing bed bug problem, these actions will assist the property owner in defending itself against claims it failed to take reasonable steps in responding to the bed bug infestation.

For more information on bed bugs visit [www.secretwardle.com](http://www.secretwardle.com), information/white papers.

*Secret Wardle is presenting a bed bug litigation webinar on Wednesday, November 18, 2009. For webinar or other bed bug information, contact Michael Crow at [mcrow@secretwardle.com](mailto:mcrow@secretwardle.com).*

**Bed Bug Class on Friday  
November 6,  
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## Connect with NAA:



### Three California Multifamily Associations Join NAA

*By Ron Shelton, CAPS  
2009 National Apartment Association  
Chairman of the Board  
Amalgamated Management Corp.*

Three prominent apartment associations in California recently agreed to join the National Apartment Association (NAA), America's leading advocate for quality rental housing. These groups combined represent more than 170,220 apartment homes in Southern California, and are now in a stronger position to deliver high-quality services to their members.

NAA leadership approved charters for the Apartment Association of Greater Los Angeles (AAGLA), Apartment Association of Orange County (AAOC) and Apartment Association, California Southern Cities (AACSC) in late September.

"With NAA behind us, we believe we will be better able to protect your rights as apartment owners against those who wish to take them away," said Jerry L'Ecuyer, President, Apartment Association of Orange County.

"AAGLA will start offering the nation's leading designation programs in maintenance, management, leasing and fair housing," emphasized Jim Clarke, Executive Director, Apartment Association of Greater Los Angeles.

"AACSC is very excited to have added the Maintenance Mania® national competition to our annual trade show on Sept. 30," said Todd Brisco, President of Apartment Association, California Southern Cities.

These three associations join NAA's federation of 167 state and local affiliates, which already look to NAA's educational, training, event and advocacy offerings as critical professional development and networking resources, particularly in this economy.

"Given the economic climate that our members and their residents are facing, there has never been a more important time to work together," NAA President Doug Culkin said. "We happily greet this opportunity to have them at our collaborative table. Such a partnership will provide additional support to their California-based efforts, while making NAA's national resources available, which enhances the value of membership to an independent rental owner, property management professional or large multifamily owner."

#### Assembly of Delegates Meets Nov. 12-14

The 2009 Assembly of Delegates (AOD) will be held Nov. 12-14 at the Grand Hyatt Tampa Bay in Tampa, Fla. The AOD is NAA's largest business meeting of the year, where all NAA and NAAEI Boards, Committees and Task Forces meet and the incoming volunteer leadership is installed, including 2010 NAA Chairman of the Board Marc Rosenwasser. To register and make hotel reservations, please visit [www.naahq.org/events/AOD](http://www.naahq.org/events/AOD).

#### National Lease Program Continues Growth

The National Lease Program continues to experience overall robust growth as well as overwhelming interest in its monthly, informational Webinars. Annually, the program has grown at an average rate of more than 30 percent and is enthusiastic about future growth with the welcoming of the three recently approved affiliates in California.

Join the National Lease Program staff on the last Wednesday of each month at 2:30 p.m., EST, for instructional Webinars. The 30-minute tutorials illustrate how the program can help communities increase operational efficiency, legal security and lease accuracy. Contact Justin Barker at [justin@naahq.org](mailto:justin@naahq.org).

#### Did You Know?

Units magazine has created a new monthly department called "Finance Insider," which debuted in the magazine's October issue. Look for this and other units departments each month in this flagship publication of the National Apartment Association

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# EPA Lead Con't:

rental property owners) will need to apply to become Certified Renovation Firms. Also, an estimated 235,000 individuals will need to be trained as Certified Renovators by EPA-accredited training providers. In the first year, EPA estimates that approximately 8.4 million renovation events will trigger the Rule's requirements.

Renovation, repair and painting projects that will only disturb surfaces and building components that have been tested and found to be free of lead-based paint are excluded from the Rule. Other Rule exclusions include:

- Activities that disturb less than six square feet or less of painted surfaces per *interior* room.
- Activities that disturb less than 20 square feet or less of painted surfaces per *exterior* side.
- Abatement work, which is intended to permanently eliminate lead-based paint hazards.
- Emergency renovations necessitated by sudden and unexpected events, which are required to address immediate human safety or health hazards or to avoid significant damage to equipment or other property. These emergency renovations are exempt from the Rule's information distribution, warning sign posting, containment, waste handling, training and certification requirements. However, the Rule's cleaning, "cleaning verification" and recordkeeping requirements will still apply.

When any work involves window replacement, demolition of painted surfaces and/or building components, or "restricted practices," such as using a machine sander with a dust collection shroud and HEPA vacuum exhaust port, the above exclusions do not apply.

## Firm Certification and Responsibilities

Beginning on October 22, 2009, any entities that renovate, repair or paint target housing or child occupied facilities must submit an application, including a \$300 fee, to EPA in order to become a Certified Renovation Firm. Firm certification is good for five years. Firms must:

- Ensure that all personnel are either Certified Renovators or have received on-the-job training from a Certified Renovator.
- Meet pre-renovation education requirements.
- Assign at least one Certified Renovator to each regulated project.
- Ensure that contractors and subcontractors working on regulated projects are also Certified Renovation Firms meeting the same requirements.
- Ensure that lead-safe work practice standards and the "cleaning verification" procedure are followed on each regulated project.
- Meet recordkeeping requirements, including maintaining project records for three years.

## Individual Certification and Responsibilities

Many maintenance technicians, maintenance supervisors, service personnel, unit turnover staff, building trades contractors' and subcontractors' workers, and other employees will have to be trained and certified as Renovators by EPA-accredited training providers. Certified Renovators will need to be assigned to each regulated project. They will also be responsible for training non-certified workers about lead-safe work practices. Individual certification is also good for five years. Certified Renovators must:

- Individually perform the renovation, repair or painting work, and train and direct the work of any other uncertified workers on the job site.
- Be physically present on the job site or available by telephone at all times.
- Be physically present during job site set-up, including posting warning signs and establishing containment.
- Assure that any dust and debris generated by the work is minimized, contained, controlled and cleaned up as the project proceeds.
- Be physically present during final cleaning of the work area and

ensure that waste is properly bagged and disposed of off-site.

- Conduct the "cleaning verification" procedure.
- Prepare and maintain required project records.

## Resident Information and Education

Prior to conducting renovation, repair or painting projects in pre-1978 target housing or child-occupied facilities, renovators must provide a new EPA booklet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, to the adult residents of an occupied dwelling unit. Renovators must also obtain a signed form acknowledging their receipt of the pamphlet or maintain proof that the pamphlet was mailed or that there were unsuccessful attempts to deliver it. If working in common areas of a multifamily property or in child-occupied facilities, renovators must notify residents or parents/guardians of the children, and post informational signs about the work.

## Lead-Safe Work Practices and the "Cleaning Verification" Procedure

The Rule requires that the work area be properly contained before work begins, that lead-contaminated dust and debris generated by the work is minimized and controlled, and that the work area is properly cleaned upon completion of the work. Then, the Certified Renovator assigned to the project must conduct the "cleaning verification" procedure.

This procedure involves separately wiping floors, countertops and windowsills with commercially available individual wet cleaning cloths and then comparing each cloth to an EPA-issued "cleaning verification card." For floors in the work area, one wet cleaning cloth is used for each 40 square foot section. If a wet cleaning cloth is darker than the cleaning verification card, the Certified Renovator must re-clean that surface and then re-wipe it with a new wet cleaning cloth. If the second wet cleaning cloth is still darker than the cleaning verification card, the Certified Renovator must wait at least one hour and allow that surface to dry completely. Then, the surface is wiped for a final time with a dry electrostatic cleaning cloth. This completes the cleaning verification procedure.

## Enforcement Provisions

EPA has the authority to seek civil fines of \$32,500 per offense for failure to comply with the Rule's requirements. EPA can also seek criminal fines of \$32,500, plus potential jail time, for knowing and willful violations of these requirements. Additionally, EPA can revoke the certification of a Certified Renovation Firm and/or a Certified Renovator who violates the Rule.

## Summary

To prepare to implement the Rule's requirements, third-party property managers, multifamily property owners, and others responsible for target housing and child-occupied facilities should consider developing a plan that includes a compliance strategy, a training strategy, a certification strategy and a recordkeeping strategy. By doing so, your organization will be well equipped and ready to meet the new requirements once they take effect in April 2010.

*Jack Anderson is Vice President of Governmental Operations at CONNOR, a national real estate due diligence and environmental training organization headquartered in Baltimore. CONNOR, which was established in 1991, is EPA accredited to train the new EPA Certified Renovator Initial and Certified Renovator Refresher courses. You can contact at: (443) 322-1223 (direct dial) or [janderson@connorsolutions.com](mailto:janderson@connorsolutions.com)*

## Benefits Spotlight:



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#### WA3 Power Hours Coming up

Thursday, November 12

Power Hour for Managers (and others interested)

**Instructor: Melissa Fuller, Apartments.com**

**Topic: Effective Follow up Emails**

**Time: 9:00 am to 10:00 am ... Cost: Free**

**Host community: Lake Village of Ann Arbor,  
101 Lake Village Dr, Ann Arbor**

Thursday, December 10

Power Hour for Leasing Persons (and any others interested)

**Instructor: Kathleen Mabie, Owner Success On Site**

**Topic: Leasing MOMENTUM...Brainstorming for Responsibility, Goals, First things first, and Constant Growth**

**Time: 9:00 to 10:00 am ... Cost: Free**

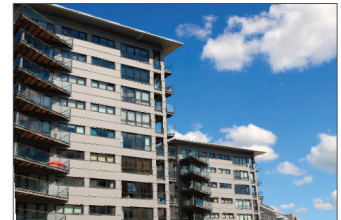
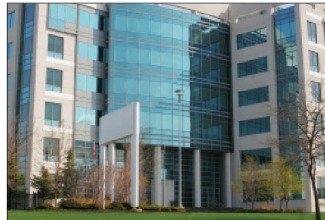
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# CAPS

### **CERTIFIED APARTMENT PORTFOLIO SUPERVISOR**

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## FALL GENERAL MEMBERSHIP MEETINGS

**November 10, Annual General Membership  
Breakfast and Voting**

**Weber's Inn, 8:00 to 10:00 am .. Cost: \$20**

**Invited Guest: Ambassador Ron Weiser, Former Ambassador to Slovakia, Currently Michigan Republican Party  
Chair and owner of McKinley**

**Topic: Current state of Michigan and Slate of Gubernatorial Candidates**

### WA3 Board Nominees:

Mary Bates, Windemere Park Apartments  
Jeff Hazel, Associated Estates  
Jim Fink, Fink and Valvo, PLLC  
John Wade, Investors Property Management

### PMAM vendor nominees:

Don Eckardt, Automatic Apartment Laundries  
Mike Kovalesky, Advanced Internet  
Russell Edgerton, CBC AmRent

**December 10, Holiday Awards Night  
(new format)**

**Weber's Inn, 6:00 to 8:00 pm .. Cost: \$35**

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## Events:

### NOVEMBER:



**2-Ann Arbor Student Housing Fair** - Alumni Center, 200 Fletcher, \$55 member/\$200 nonmember rate per table, 1 to 4 pm.



**5 and 6 - GLASStar Education and Awards night.** See ad this page for the Education Day. New this year is a Bed Bug Class on Friday included in the Thursday Education ticket you purchase or if you cannot make Thursdays education and would just like to come to the Class on Friday afternoon prior to the awards event you can pay just \$39 and come to the Kellogg Center early. In any case, there are two great days of education and events planned so make sure you make your reservations now.



**10 - Annual General Membership Breakfast** - Cost: \$20....Confirmed guest: Ambassador Ron Weiser, owner of McKinley properties and recently appointed chair of the Michigan Republican Party. Time: 8 to 10 am at Weber's Inn. Election of new officers.



**12 - Power Hour for Managers with Apartments.com.** Topic: Effective Follow up Emails..... at Lake Village of Ann Arbor.

### DECEMBER:



**9 - Power Hour for Leasing Persons with Kathleen Mabie, Success On Site.** Topic: Leasing Momentum, people make the difference.....at Arbor Landings Apartments.



**10 - Holiday Awards Night - \*New Format\*** Cost: \$35 per person, Hors D'Oeuvres, drinks, awards and prizes. Weber's Inn, 6:00 to 8:30 pm. Spouses welcome. Dancing and Dinner available on your own in the Habitat Lounge.

# 7th Annual GLASStar<sup>★</sup> Education Conference

**Thursday and Friday, November 5-6, 2009**  
**Kellogg Center, East Lansing**



*Enjoy two days of fun and interactive information designed to increase your property's bottom line in today's market.*

**Register by September 15th and save \$10 OFF EACH TICKET!**

### Featuring National Speakers:

Brenda Asbury, Meagan Johnson,  
Larry Johnson, Sherre Helmer,  
and Tim Richardson

**\$99** Members of DMAA, PMAMM, WAAA, PMAWM, NMPMA

**\$129** Non-members

### To Reserve Your Tickets:

**Call:** 616-531-5243

**Email:** [info@pmamhq.com](mailto:info@pmamhq.com)

**Mail:** 2675 44th Street SW #303  
Wyoming, MI 49519

Please make checks payable to "PMAM"

**[www.pmamhq.com](http://www.pmamhq.com)**



**Bed Bug Class on Friday included with Education Conference**  
**\$39 if NOT coming to Thursday Education**

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