



Insurance Claims and Risk Management Around Habitability Claims



Introduction



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Agenda

- Habitability Claims – What They Are
- Habitability Claims – Why They Are A Big Deal
- Habitability Exclusion – What It Is & Impact On Landlord/Owners
- Habitability Exclusion – How To Reduce The Risk Of The Exclusion
- Questions & Answers



Habitability Claims – What They Are

- Claims Asserted By Tenants Against Apartment Owners (Landlord/Owners)
- Alleging Violations Of Any Health And Safety, Civil Or Federal Habitability Law
- Simply Put: Claims Based On Substandard Living Conditions

Habitability Claims – Examples

- Pest And Vermin Infestation – Bedbugs/Cockroaches
- HVAC issues
- Electrical Issues (Faulty/Dangerous Wiring)
- Peeling Paint
- Faulty Weatherproofing
- Broken Windows
- Leaking Roof And Water Intrusion
- Lack Of Carbon Monoxide And Smoke Detectors
- Faulty Plumbing And Water Sealing
- Mold
- Lead-Based Paint
- Catch-All “Lack Of General Maintenance”



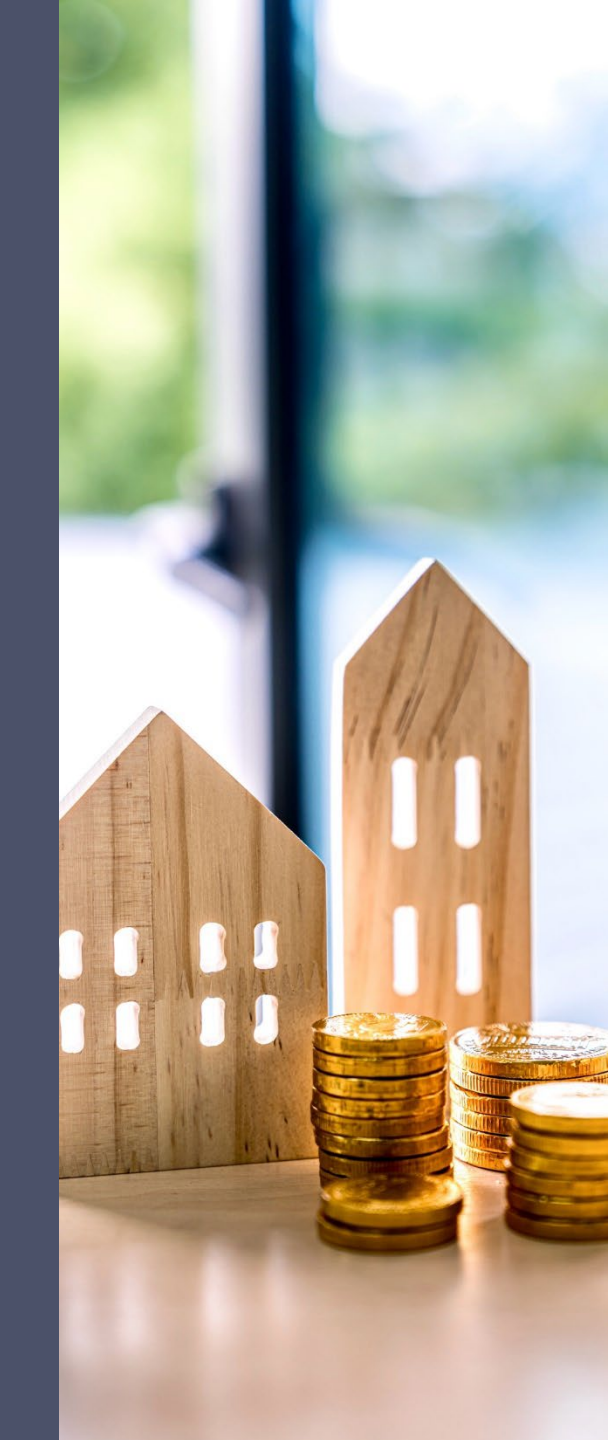
Habitability Claims – Sources Of Law

- California: Civil Code Very Specific Standards For A Tenantable Living Space
- Other States: Similar Standards
- Federal Statutes: May Be Implicated
- Common Law
 - Implied Warranty Of Habitability
 - Constructive Eviction
 - Others (Whatever Plaintiff Attorneys Can Think Up)

A vertical image on the left side of the slide shows a person's hand holding a blue book. The hand is wearing a pearl bracelet and a dark sleeve. The background is a library with many shelves of books.

Habitability Claims – Why They Are A Big Deal

- Plaintiff Lawyers Bringing A Multitude Of Claims
- Single Plaintiff Claims
- Multiple Plaintiff Claims (Dozens Of Plaintiffs)
- Attorneys' Fees May Be Recoverable (California Statutes)



Habitability Claims – Why They Are A Big Deal

- Juries Handing Down Huge Awards
- Single Family Bedbug Claim: \$1.6M (jury)
- Multi-Tenant Cockroach Infestation Claim: \$2.18M (settlement)

Habitability Claims – Why They Are A Big Deal

- Defense Costs Are Significant
- Reputational Harm Is Significant (Public Trials)



A small white house model with a chimney and several windows is placed inside a clear glass dome. The dome is resting on a silver-colored base. The background is dark and out of focus.

Habitability Claims – Why They Are A Big Deal

- Claims Are Coming Nationwide
- Heavy Concentration In California
- Landlords Should Expect Claims Throughout The Country
- Insurer Response – Habitability Exclusion

Habitability Exclusion – What Is It



- Exclusion Broadly Precluding Coverage For Habitability Claims
- Insurers Are Including The Exclusions Regularly In Landlord/Owners Liability Policies
- No Single Form

Habitability Exclusion – Example

Habitational Claims Exclusion

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury arising directly or indirectly out of, or caused by or contributed to in any way by: constructive eviction; any breach of warranty of habitability, whether express, implied or statutorily imposed; habitability offenses of any nature whatsoever; or any conditions of a room, dwelling or common areas, including but not limited to any claims of failing to maintain or repair the room, dwelling or common areas, claimed in connection with or claimed to have caused any constructive eviction, breach of the warranty of habitability, or other habitability offenses.





Habitability Exclusion – Example

Habitability Exclusion

- This insurance does not apply to any claim, allegation, demand, “suit,” action, litigation, arbitration, alternative dispute resolution or other judicial or administrative proceeding alleging “bodily injury,” “property damage,” or “personal and advertising injury” arising directly or indirectly out of:
 - a) Alleged or actual violation(s) of any of the following, including any amendments, as they pertain to habitability or maintenance of any short-term or long-term habitational unit:
 1. Judicial decisions including Common Law Rulings;
 2. Civil Codes;
 3. Health and Safety Codes;
 4. Any Housing and Urban Development laws, regulations, ordinances or statutes;
 5. Rent stabilization laws, regulations or ordinances;
 6. Section 8 Housing Programs, including other federal, state and local government subsidized housing programs;
 7. Any administrative rules or regulations pertaining to (1) through (6) above or any of those promulgated by local municipalities; or



Habitability Exclusion – Example

Habitability Exclusion (cont.)

- b) Alleged or actual failure to maintain any premises, site or location in, or restore any premises, site or location to, a safe, sanitary, healthy, habitable and tenantable condition; or
- c) Actual or constructive wrongful eviction arising out of a. or b. above.

This exclusion applies even if negligence or other wrongdoing is alleged in the supervision, hiring, employment, training, investigation, reporting to authorities, or monitoring of others by an insured if the “occurrence” which caused the “bodily injury,” “property damage,” or “personal and advertising injury” involves any one or more of a., b. or c. above.

Habitability Exclusion – Impact To Landlord/Owners

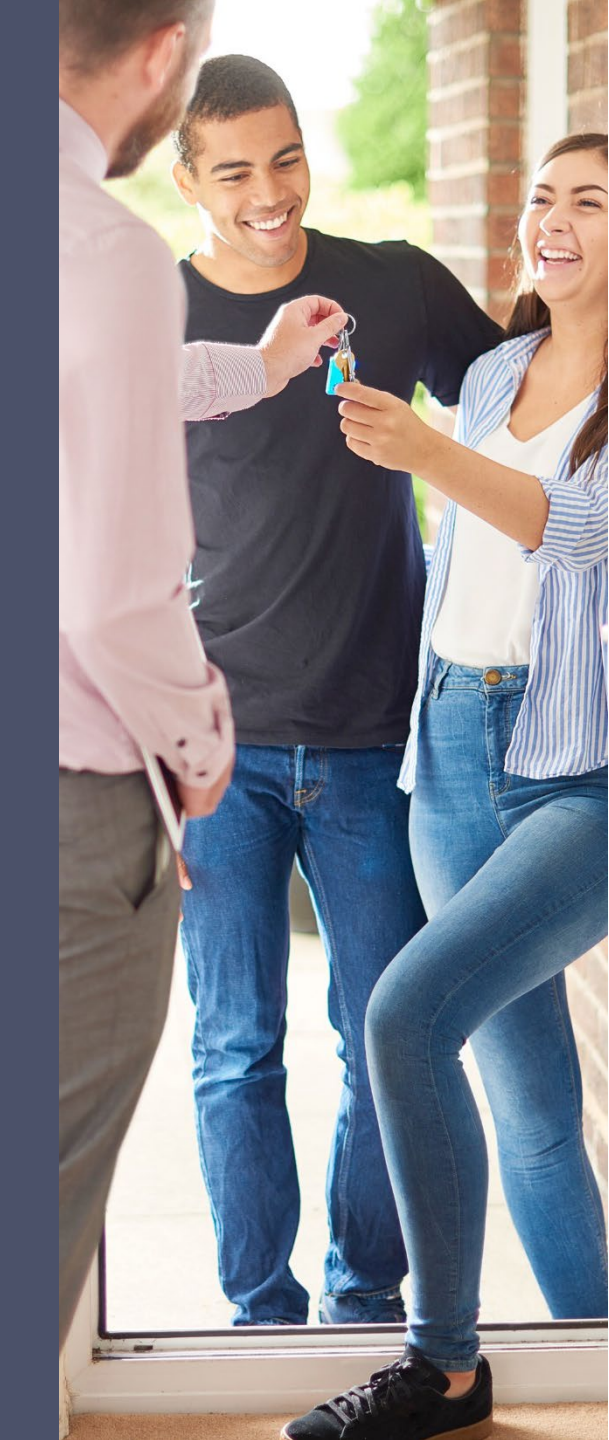


- Eliminates All Coverage – Defense & Indemnity
- Landlord/Owners Must Fund Defense
- Landlord/Owner Must Pay Any Settlement/Judgment
- In Other Words – Landlord/Owner Is On Its Own (\$\$\$)
- True Whether Allegations Are Baseless



How To Reduce The Impact Of The Habitability Exclusion

- Underwriting: Seek To Remove/Reduce Exclusion
- Strategy: Show Mitigation Efforts In Underwriting Presentation
 - Pictures – Property/Mitigation Efforts/Etc.
 - Maintenance Procedures (Written)
 - Maintenance Records
 - Maintenance Contracts
- Make It Easy For The Underwriter To Trust You

A man in a pink shirt is handing a set of keys to a young couple. The couple, consisting of a man in a black t-shirt and a woman in a blue and white striped shirt, are standing in a doorway and smiling. The woman is holding the keys. The scene is brightly lit, suggesting a sunny day outside.

How To Reduce Impact Of The Habitability Exclusion

- Renewals: Seek To Remove/Reduce Exclusion
- Comply With Any Insurer Requirements
 - Understand Any Requirements (Consult Insurance Broker/Coverage Attorney)
 - Document Compliance With Requirements (Records/Photos/Etc.)
- Make It Easy For The Underwriter To Trust You

A person wearing a red jacket and glasses is cleaning a large window with a squeegee. The window is divided into several panes, and the person is using the squeegee to remove water or dirt from the glass. The background shows a wooden structure, possibly part of a building under construction or renovation.

Mitigation Strategies

- Keep Current On Relevant Health Codes (Consult Landlord/Tenant Attorney)
- Repair Issues Promptly (Avoid Claims & Plaintiff Lawyers)
 - Respond Promptly
 - Repair Promptly
 - Do Not Play Pass-The-Buck
- Make It Easy For The Underwriter To Trust You



Mitigation Strategies

- Maintenance – Be Proactive
- Have A Maintenance Written Plan
- Keep Detailed Maintenance Records
- Maintenance Contracts
 - Review & Understand
 - Comply With Any Requirements
 - Consistently Enforce Contractor Requirements
- Make It Easy For The Underwriter To Trust You

Maintenance – Examples (Non-Exclusive List)

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system
- Gas facilities in good working order
- Heating facilities in good working order
- An electrical system, including lighting, wiring and equipment, in good working order



Maintenance – Examples (Non-Exclusive List)



- Clean and sanitary buildings, grounds and appurtenances (for example, a garden or a detached garage) which are free from debris, filth, rubbish, garbage, rodents and vermin
- Adequate trash receptacles in good repair
- Floors, stairways and railings in good repair
- A working toilet, wash basin, and bathtub or shower; toilet and bathtub/shower must be in a room that is ventilated and allows for privacy
- A kitchen with a sink, which cannot be made of an absorbent material (for example, wood)

Maintenance – Examples (Non-Exclusive List)

- Natural lighting in every room through windows or skylights; unless there is a ventilation fan, the windows must be able to open at least halfway
- Safe fire or emergency exits leading to a street or hallway; stairs, hallways and exits must be litter-free; storage areas, garages, and basements must be free of combustible materials
- Operable deadbolt locks on the main entry doors of rental units and operable locking or security devices on windows
- Working smoke detectors in all units of multi-unit buildings, such as duplexes and apartment complexes; apartment complexes also must have smoke detectors in common stairwells





Q & A

