

Legally Bed Bugged



CT Bed Bug Forum IV, December 7, 2010
The CT Agricultural Experiment Station
New Haven, CT

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Presentation overview–

- Health and housing officials responsibilities including inspection, right of entry, administrative search warrants, emergency orders and referral court.
- Pest control operators right of entry into tenant's units.
- Landlord and tenant obligations and responsibilities under current bed bug laws.

Current CT Law on Bed Bug Enforcement

- Enforced through general provisions of the public health, housing and landlord/tenant statutes.
- Also enforced through municipal or district ordinances adopted pursuant to the Municipal Powers Act (CGS 7-148).

CGS 19a-36

CT Public Health Code

- **Sec. 19a-36. (Formerly Sec. 19-13). Public Health Code. Fees. Fencing of naturally formed swimming pools. Use of private wells or installation of replacement wells.** (a) The Commissioner of Public Health shall establish a Public Health Code and, from time to time, amend the same. The Public Health Code may provide for the preservation and improvement of the public health.

... (7) Any person who violates any provision of the Public Health Code shall be fined not more than one hundred dollars or imprisoned not more than three months or both.

CPHC – Abatement of Nuisance

Section 19-13-B2

19-13-B2. Abatement of nuisance (a) Any local director of health, upon information of the existence of a nuisance or any pollution occurring within his jurisdiction, or when any such nuisance or pollution comes to his attention, shall, within a reasonable time, investigate and, upon finding such nuisance or pollution exists, shall issue his order in writing for the abatement of the same.

(b) Such order shall specify the nature of such nuisance or pollution and shall designate the time within which such abatement or discontinuance shall be accomplished; and if such order is not complied with within the time specified, the facts shall be submitted to the [prosecuting authority](#). Copies of all orders shall be kept on file by the director of health in his office and copies of the same shall be furnished the state commissioner of health on request.

Is it enough to say:
“Tenant won’t allow
access?”

Administrative Search Warrants

- Municipal officials should seek an administrative search warrant through your local state's attorney's office for all required inspections where entry is not otherwise available at law.

CGS 19a-206.

Duty of directors of health.

(see CGS Chapter 368f for Municipal
District Health Directors)

CGS 19a-206.

- **19a-206. Duties of municipal directors of health. Nuisances and sources of filth. Injunctions. Civil penalties. Authority of town director within city or borough.** (a) Town, city and borough directors of health or their authorized agents shall, within their respective jurisdictions, examine all nuisances and sources of filth injurious to the public health, cause such nuisances to be abated and cause to be removed all filth which in their judgment may endanger the health of the inhabitants. **Any owner or occupant of any property who maintains such property, whether real or personal, or any part thereof, in a manner which violates the provisions of the Public Health Code enacted pursuant to the authority of sections 19a-36 and 19a-37 shall be deemed to be maintaining a nuisance or source of filth injurious to the public health.** Any local director of health or his authorized agent or a sanitarian authorized by such director may enter all places within his jurisdiction where there is just cause to suspect any nuisance or source of filth exists, and abate or cause to be abated such nuisance and remove or cause to be removed such filth.

CGS 19a-206, cont.

(b) When any such nuisance or source of filth is found on private property, such director of health shall order the owner or occupant of such property, or both, to remove, abate or remediate the same within such time as the director directs. If the owner of such property is a registrant, such director may deliver the order in accordance with section 7-148ii, provided nothing in this section shall preclude a director from providing notice in another manner permitted by applicable law. If such order is not complied with within the time fixed by such director: (1) Such director, or any official of such town, city or borough authorized to institute actions on behalf of such town, city or borough, may institute and maintain a civil action for injunctive relief in any court of competent jurisdiction to require the abatement or remediation of such nuisance, the removal of such filth and the restraining and prohibiting of acts which caused such nuisance or filth, and such court shall have power to grant such injunctive relief upon notice and hearing;

CGS 19a-206, cont.

(b)(2) (A) the owner or occupant of such property, or both, shall be subject to a **civil** penalty of two hundred fifty dollars per day for each day such nuisance is maintained or such filth is allowed to remain after the time fixed by the director in his order has expired, except that the owner or occupant of such property or any part thereof on which a public eating place is conducted shall not be subject to the provisions of this subdivision, but shall be subject to the provisions of subdivision (3) of this subsection, and (B) such civil penalty may be collected in a civil proceeding by the director of health or any official of such town, city or borough authorized to institute civil actions and shall be payable to the treasurer of such city, town or borough; **and (3) the owner or occupant of such property, or both, shall be subject to the provisions of sections 19a-36, 19a-220 and 19a-230.**

CGS 19a-206, cont.

(c) If the director institutes an action for injunctive relief seeking the abatement or remediation of a nuisance or the removal of filth, the maintenance of which is of so serious a nature as to constitute an immediate hazard to the health of persons other than the persons maintaining such nuisance or filth, he may, upon a verified complaint stating the facts which show such immediate hazard, apply for an ex parte injunction requiring the abatement or remediation of such nuisance or the removal of such filth and restraining and prohibiting the acts which caused such nuisance or filth to occur, and for a hearing on an order to show cause why such ex parte injunction should not be continued pending final determination on the merits of such action. If the court finds that an immediate hazard to the health of persons other than those persons maintaining such nuisance or source of filth exists, such ex parte injunction shall be issued, provided a hearing on its continuance pending final judgment is ordered held within seven days thereafter and provided further that any persons so enjoined may make a written request to the court or judge issuing such injunction for a hearing to vacate such injunction, in which event such hearing shall be held within three days after such request is filed.

CGS 19a-206, cont.

(d) In each town, except in a town having a city or borough within its limits, the town director of health shall have and exercise all the power for preserving the public health and preventing the spread of diseases; and, in any town within which there exists a city or borough, the limits of which are not coterminous with the limits of such town, such town director of health shall exercise the powers and duties of his office only in such part of such town as is outside the limits of such city or borough, except that when such city or borough has not appointed a director of health, the town director of health shall, for the purposes of this section, exercise the powers and duties of his office throughout the town, including such city or borough, until such city or borough appoints a director of health.

CGS 19a-206, cont.

(e) When such nuisance is abated or remediated or the source of filth is removed from private property, such abatement, remediation or removal shall be at the expense of the owner or, where applicable, the occupant of such property, or both, and damages and costs for such abatement, remediation or removal may be recovered against the owner or, where applicable, the occupant, or both, by the town, city or borough in a civil action as provided in subsection (b) of this section or in a separate civil action brought by the director of health or any official of such city, town or borough authorized to institute civil actions.

CGS 19a-206, cont.

(f) If the order of a district department of health, formed pursuant to section 19a-241, causes the displacement of any occupant of a residential dwelling unit, the municipality in which such dwelling unit is located shall be responsible for any relocation assistance afforded to such occupant pursuant to chapter 135. The district department of health shall provide written notification to the occupant of the occupant's rights under chapter 135 at the time an order causing displacement is issued. The written notification shall include the name, address and telephone number of the person authorized by the municipality to process applications for relocation assistance afforded pursuant to chapter 135.

Other enforcement remedies.

- CHAPTER 833a. PUBLIC ENFORCEMENT OF HEALTH AND SAFETY STANDARDS IN TENEMENT AND BOARDING HOUSES, AND IN RENTED DWELLINGS

CGS 47a-52

47a-52. Abatement of conditions in rented dwelling other than tenement house constituting danger to life or health. (a) As used in this section, "rented dwelling" means any structure or portion thereof which is rented, leased, or hired out to be occupied as the home or residence of one or two families and any mobile manufactured home in a mobile manufactured home park which, although owned by its resident, sits upon a space or lot which is rented, leased or hired out, but shall not include a tenement house as defined in section 19a-355 or in section 47a-1.

(b) "Department of health" means the health authority of each city, borough or town, by whatever name such health authority may be known.

CGS 47a-52, cont.

- (c) When any defect in the plumbing, sewerage, water supply, drainage, lighting, ventilation, or sanitary condition of a rented dwelling, or of the premises on which it is situated, in the opinion of the department of health of the municipality where such dwelling is located, constitutes a danger to life or health, the department may order the responsible party to correct the same in such manner as it specifies. If the responsible party is a registrant, the department may deliver the order in accordance with section 7-148ii, provided nothing in this section shall preclude a director from providing notice in another manner permitted by applicable law. If the order is not complied with within the time limit set by the department, the person in charge of the department may institute a civil action for injunctive relief, in accordance with chapter 916, to require the abatement of such danger.

CGS 47a-52, cont.

- (d) Paint on the exposed surfaces of the interior of a rented dwelling shall not be cracked, chipped, blistered, flaking, loose or peeling so as to constitute a health hazard. Testing, remediation, abatement and management of lead-based paint at a rented dwelling or its premises shall be as defined in, and in accordance with, the regulations, if any, adopted pursuant to section 19a-111c.

(e) When the department of health certifies that any such rented dwelling or premises are unfit for human habitation, by reason of defects which may cause sickness or endanger the health of the occupants, the department may issue an order requiring the rented dwelling, premises or any portion thereof to be vacated within not less than twenty-four hours or more than ten days.

CGS 47a-52, cont.

- (f) Any person who violates or assists in violating, or fails to comply with, any provision of this section or any legal order of a department of health made under any such provision shall be fined not more than two hundred dollars or imprisoned not more than sixty days or both.
- (g) Any person aggrieved by an order issued under this section may appeal, pursuant to section 19a-229, to the Commissioner of Public Health.

CGS 47a-53

- **47a-53. Orders of enforcement agency. Municipal lien for expenses in executing order.** (a) Whenever any tenement, lodging or boarding house or any building, structure, excavation, business pursuit, matter or thing in or about such house or the lot on which it is situated, or the plumbing, sewerage, drainage, lighting, paint or ventilation of such house, is, in the opinion of the board of health or other enforcing agency, in a condition which is or in its effect is dangerous or detrimental to life or health, or whenever any tenement, lodging or boarding house in the opinion of the board or enforcing agency, is in violation of the provisions of section 19a-109, the board or other enforcing agency may declare that the same, to the extent specified by the board or other enforcing agency, is a public nuisance. (cont. next slide)

CGS 47a-53, cont.

- (cont.) The board or enforcing agency may order such public nuisance to be removed, abated, suspended, altered or otherwise remedied, improved or purified. The board of health or other enforcing agency may also order or cause any tenement house or part thereof, or any excavation, building, structure, sewer, plumbing pipe, paint, passage, premises, ground, matter or thing in or about a tenement, lodging or boarding house or the lot on which such house is situated, to be purified, cleansed, disinfected, removed, altered, repaired or improved. If the board or enforcing agency issues an order to a registrant, such order may be delivered in accordance with section 7-148ii, provided nothing in this section shall preclude a board or enforcing agency from providing notice in another manner permitted by applicable law.

CGS 47a-53, cont.

- (b) If any order of the board of health or other enforcing agency is not complied with, or not so far complied with as the board or other enforcing agency regards as reasonable, within five days after the service thereof, or within such shorter time as the board or other enforcing agency designates, such order may be executed by the board or other enforcing agency, through its officers, agents, employees or contractors. The expense of executing such order, including an amount not to exceed five per cent of the expense thereof as a service charge and ten per cent of the expense thereof as a penalty shall be collected from the owner by an action in the name of the city, borough or town.

CGS 47a-53, cont.

- (c) (1) Any expense of executing an order, including any service charge and penalty imposed by the board of health or other enforcing agency pursuant to the provisions of subsection (b) of this section, and remaining unpaid for a period of sixty days after its due date, shall constitute a lien upon the real estate against which the expense was imposed, provided a notice of violation is recorded in the land records and indexed in the name of the property owner not later than thirty days after the expense was imposed. (2) Each such notice of violation shall be effective from the time of the recording on the land records. Each lien shall take precedence over transfers and encumbrances recorded after such time. (3) Any municipal lien pursuant to the provisions of this section may be foreclosed in the same manner as a mortgage. (4) Any municipal lien pursuant to this section may be discharged or dissolved in the manner provided in sections 49-35a to 49-37, inclusive.

CGS 47a-53, cont.

- (d) Any board of health or other enforcing agency imposing an expense, including a service charge and penalty, pursuant to subsection (b) of this section, shall maintain a current record of all properties with respect to which such expenses remain unpaid in the office of such board or agency. Such record shall be available for inspection by the public.

CGS Sec. 47a-7

Landlord's responsibilities

- **Sec. 47a-7. Landlord's responsibilities.** (a) A landlord shall: (1) Comply with the requirements of chapter 368o and all applicable building and housing codes materially affecting health and safety of both the state or any political subdivision thereof; (2) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant; ...

CT General Statutes (CGS)

Section 47a-1. Definitions.

- (d) "Landlord" means the owner, lessor or sublessor of the dwelling unit, the building of which it is a part or the premises.
- (l) "Tenant" means the lessee, sublessee or person entitled under a rental agreement to occupy a dwelling unit or premises to the exclusion of others or as is otherwise defined by law.
 - Includes tenants under eviction and verbal agreements

CGS 47a-7, cont.

Greater duty takes precedence.

- 47a-7(b) If any provision of any municipal ordinance, building code or fire code requires a **greater duty** of the landlord than is imposed under subsection (a) of this section, then such provision of such ordinance or code **shall take precedence** over the provision requiring such lesser duty in said subsection.

**CAN LANDLORD TRANSFER THE
OBLIGATION TO REMEDY BED
BUGS OR OTHER VIOLATIONS
TO TENANT?**

**CONTROLLED BY
CGS 47a-7(c) and (d).**

CGS Sec. 47a-7, cont.

Landlord transfer of duty to tenant

- 47a-7(c) The landlord and tenant of a **single-family** residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions (5) and (6) of subsection (a) and also specified repairs, maintenance tasks, alterations, or remodeling, provided the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

C.G.S. Sec. 47a-7, cont.

Landlord transfer of duty to tenant

- (d) The landlord and tenant of a dwelling unit **other than a single-family** residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling if (1) the agreement of the parties is entered into in good faith; (2) the agreement is in writing; (3) the work is not necessary to cure noncompliance with subdivisions (1) and (2) of subsection (a) of this section; and (4) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

WHAT CAN HAPPEN IF THE
LANDLORD FAILS TO MEET HIS
DUTIES UNDER CGS 47a-7?

Violation of CGS 47a-7(a) = NO RENT

- **Sec. 47a-4a. Effect of failure to comply with section 47a-7.** A rental agreement shall not permit the receipt of rent for any period during which the landlord has failed to comply with subsection (a) of section 47a-7.

CGS 47a-12

Tenant's remedies.

- **Sec. 47a-12. Breach of agreement by landlord. Tenant's remedies.** (a) If there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 47a-7 which materially affects health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach. If the breach is not remedied within fifteen days after receipt of the notice, the rental agreement shall terminate on such date.

How much is the landlord expected to do to get rent?

- The defendant contends that he should not suffer a loss of rent because of his efforts to rid the building of vermin. This claim misperceives the nature of the litigation. Whether or not a landlord has complied with his statutory obligations does not depend particularly, if at all, upon his due care or bonafides. Rather, the issue is whether the landlord has complied with contractual obligations which have been imposed upon him by law. The statute which is now [§ 47a-7\(a\)](#) has been aptly described as establishing a **warranty or covenant of habitability upon which a tenant's obligation to pay rent is contingent.** [LeClair v. Woodward, 6 Conn.Cir. 727, 730 \(1970\)](#); see *Todd v. May*, supra, 758.

Infestation enforced under a local housing code.

- The Housing Code of New Haven (§ 309) makes the landlord responsible for extermination when two or more units or the common parts in a dwelling house are infested with insects . Although not every code violation is ipso facto a violation of [§ 47a-7](#), an infestation that is sufficiently severe to warrant a finding that it is capable of materially affecting the tenant's health and safety is a breach of the statutory warranty. [Steinegger v. Rosario, 35 Conn.Sup. 151, 156-57 \(1979\)](#); [Todd v. May, 6 Conn.Cir. 731, 737, \(1973\)](#). Recently, in *Newbold v. Aboudi*, CVNH 8410-1080 (1986) (NH H.D. # 352), the court found that [§ 47a-7\(a\)](#) was violated by a severe cockroach infestation.

Constructive eviction.

The resurgence of the cockroaches, in the number in which they appeared, prevented the use of the apartment as a dwelling unit. And the court finds as a fact that the resurgence was sufficient cause for the abandonment of the premises.

More important is the requirement that a constructive eviction be occasioned by some fault [FN1](#) of the landlord—whether misfeasance or nonfeasance. [Thomas v. Roper, 162 Conn. 343, 349 \(1972\)](#); [Reid v. Mills, 118 Conn. 119, 122 \(1934\)](#); *Amsterdam Realty Co. v. Johnson*, supra. In this regard, the court finds that the defendant's extermination program was not comprehensively implemented in view of the existing problem. [Tankus v. Genta, 1986 WL 296380](#).

- A constructive eviction occurs when the landlord, while not actually evicting the tenant, has done or suffered some act by which the premises are rendered unfit for the purpose for which they were leased. [Johnson v. Fuller, 190 Conn. 552-559 \(1983\)](#); [Amsterdam Realty Co. v. Johnson, 115 Conn. 243, 248 \(1932\)](#). To support a constructive eviction, there must be some fault on the part of the landlord, but the fault may be nonfeasance as well as misfeasance. [Thomas v. Roper, 162 Conn. 343, 349 \(1972\)](#); *Amsterdam Realty Co. v. Johnson, supra*. In this regard, the court finds, as it did in *Newbold v. Aboudi, supra*, that the defendants' extermination attempts were not sufficiently comprehensive in view of a known and existing problem. A constructive eviction, which the court concludes was proved to have occurred in July, 1984, relieved the plaintiff from his obligation to pay rent upon his surrender of the premises. [Amsterdam Realty Co. v. Johnson, supra at 249](#).

Other tenant actions.

CGS 47a-14:

Tenant rent receiverships

§ 47a-11. Tenant's responsibilities

A tenant shall: (a) [Comply with all obligations primarily imposed upon tenants by applicable provisions of any building, housing or fire code materially affecting health and safety](#); (b) [keep such part of the premises that he occupies and uses as clean and safe as the condition of the premises permit](#); (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to [subdivision \(5\) of subsection \(a\) of section 47a-7](#); (d) keep all plumbing fixtures and appliances in the dwelling unit or used by the tenant as clean as the condition of each such fixture or appliance permits; (e) use all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises in a reasonable manner; (f) not wilfully or negligently destroy, deface, damage, impair or remove any part of the premises or permit any other person to do so; (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in [section 47a-32](#), or a serious nuisance, as defined in [section 47a-15](#); and (h) if judgment has entered against a member of the tenant's household pursuant to subsection (c) of [section 47a-26h](#) for serious nuisance by using the premises for the illegal sale of drugs, not permit such person to resume occupancy of the dwelling unit, except with the consent of the landlord.

LANDLORD MUST USE LEGAL AND REASONABLE MEANS OF ENTRY

“In a landlord-tenant setting it would appear that the landlord should, under the circumstances of the tenant's refusal of entry for repairs, file and obtain an order of access from the Superior Court under [C.G.S. Section 47a-18](#), when a tenant refuses access under [C.G.S. Section 47a-16](#). (cont. next page)

The landlord has remedies under C.G.S. Section 47a-15 for tenants breach. Failing those actions, the landlord would be hard-pressed to establish the **necessary showing of 'lacking any reasonable means.'**” **Gayle v. Young**, Not Reported in A.2d, 1995 WL 118775, Conn.Super.,1995.

LEGAL ENTRY BY A PEST CONTROL OPERATOR THROUGH LANDLORD AND TENANT

- CGS 47a-16 LANDLORD'S RIGHT OF ENTRY
- CGS 47a-18 LANDLORD'S REMEDY ON
TENANT REFUSAL

CGS 47a-16.

Landlord's right of entry.

- **47a-16. When landlord may enter rented unit.** (a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed to repairs, alterations or improvements, **supply necessary or agreed to services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.**

(b) A landlord may enter the dwelling unit without consent of the tenant in case of **emergency**.

CGS 47a-16, cont.

(c) A landlord shall not abuse the right of entry or use such right of entry to harass the tenant. The landlord shall give the tenant reasonable written or oral notice of his intent to enter and **may enter only at reasonable times, except in case of emergency.**

(d) A landlord may not enter the dwelling unit without the consent of the tenant except (1) in case of emergency, (2) as permitted by section 47a-16a, (3) pursuant to a **court order**, or (4) if the tenant has abandoned or surrendered the premises.

CGS 47a-18

Court order for entry.

- **47a-18. Judicial relief if tenant refuses entry.**
If the tenant refuses to allow entry pursuant to section 47a-16 or section 47a-16a, the landlord may obtain a declaratory judgment or injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney's fees.

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