

AOHA/AWHA Meeting

You cannot safely assume that HARRP (or any pool or insurance company) provides coverage for every action your Authority (or its employees) takes. Coverage for some exposures may be against public policy (punitive damages), others may be prohibitively expensive (terrorism) or not capable of reasonable calculation.

On the other hand, I think it is a safe assumption that not every one of you has read the HARRP Coverage Agreement (or your personal automobile policy or homeowner's policy). Because I think it is important that you know, before a claim is filed, the areas in which your Authority/employees will not have coverage, I would like to begin the important (but maybe not too popular) practice of taking a few minutes at each of your association meetings to discuss HARRP coverage (or non-coverage) issues.

I hope you find this useful; but if you don't I'm sure you will let me know.

ARE YOU COVERED OR RUNNING BARE?

1. Your housing authority is the general partner in a tax credit partnership that owns a 200 unit complex.

The partnership has hired, from the private sector, an on-site manager, a maintenance person and two part-time employees who assist in showing the properties, accepting applications from potential residents, responding to problems on the premises, relieving the on-site manager for vacations, days off, etc.

A claim arises when a rejected applicant alleges that one of the part-time employees acted in a discriminatory way by rejecting her application. Is this a covered HARRP claim?

2. Your authority wholly owns a 100 unit project. You have hired the Acme Property Management Experts to manage that property for you. You sign the standard property management agreement in which you (Owner) agree to defend and indemnify the property manager (Agent) for any claims that arise from their management decisions or actions affecting that project. Six months after entering into the contract a resident submits a claim alleging that her children have experienced severe allergic reactions to mold in the unit. The symptoms include respiratory arrest, rashes, attention deficit and nasal hemorrhaging. She says that she informed the site manager and the maintenance people on two occasions about the mold but nothing was done. Is this a covered HARRP claim?

ANSWER #1 – No, it isn't.

See “HARRP Information Pages 1 of 3.” Item 4 “This coverage agreement applies to the locations and items of property shown in Item 3....”

Item 3 includes the schedules of covered locations. Since HARRP cannot provide coverage benefits for non-housing authority property, employees, etc., your tax credit partnerships should not be included on the property schedule. HARRP does provide errors and omissions coverage for housing authority employees and commissioners, only if they are named in a claim because of decisions they have made or actions they have taken in the course of their employment with the housing authority that has impacted the tax credit partnership. The coverage must be endorsed onto a member's coverage; the tax credit partnership property must be identified and documented for this specific purpose and the coverage is intended to be the member's safety net. HARRP cannot provide coverage for the tax credit partnership itself (even if the general partner is a HARRP member and is managing the property) or persons providing services on behalf of the partnership.

[Please note that, if the Authority's employees are providing services directly to or on behalf of any project not wholly owned by the Authority (such as maintenance or management), HARRP coverage cannot apply to the exposures created by this activity. That project must secure commercial insurance for any possible claims.]

ANSWER #2 – For the most part, no!

The first issue to be resolved is, “what housing authority employee did what to cause this situation?” Since the property management firm is not your employee, their employees are not yours.

They would not meet the definition of “Covered Party.” They also would not be an “Additional Covered Party” because they would not have been “...specifically endorsed to this Agreement....” Once again, HARRP cannot provide the benefits of its coverage to non-housing authority employees, especially in situations where their direct, active negligence is alleged to have led to the claimed injury.

If the property manager subsequently brought a breach of contract claim against the Authority for failure to defend the property manager for negligence, that would not be a covered claim either. Exclusion K. precludes coverage for the failure to perform, or breach of a contractual obligation.

In the event the tenant claimed that the Authority's liability rested on its negligent hiring or supervising of an unqualified property manager, HARRP coverage would apply, but be limited to that issue. We would make every effort to separate the interests of the property manager from those of the Authority and defend only the latter.

Since HARRP is not an insurance company, the insurance case law that creates a broader obligation to defend than to indemnify would not (in our view) be applicable. The Coverages section (Section II A) states that “...HARRP will not provide a defense or pay attorney's fees or defense costs for any loss, claim, proceeding, suit or any other legal or administrative action, or part thereof, to which this coverage agreement does not apply....”