

HARRP NOTES

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Complying With Public Records Requests

As you probably know, an area of law that is ever changing, in every state, relates to the Public Records Act (PRA). Most changes, on an annual basis, deal with exemptions. Currently there are numerous exemptions to disclosure in each state. Because the legislature and the courts are continually re-writing this section of law, it is highly recommended that you involve legal counsel in most situations where you are presented a Public Records Disclosure Request. If you are not required to disclose, it is usually best not to disclose. However, you are more than likely required to identify what documents you are withholding.

If you feel you should withhold information, or documents, you should be prepared to demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure. This can be a very fine line in some cases and should be discussed with counsel on a case by case basis. This is even more important knowing that once you disclose any information it is forever public record.

"Exemption from disclosure" or "exemption" or "exempt" are the terms used to describe the laws allowing an agency to withhold a public record or part of one. The PRA and other statutes outside the PRA contain hundreds of very specific exemptions from disclosure and dozens of court cases to interpret them. A full treatment of all exemptions is beyond the scope of any article we can publish. (For a more in-depth treatment of your states' exemptions, including tables listing exemptions, you should refer to your State Bar Association's Public Records Act section.)

Given the pro-disclosure approach of the PRA, the law requires an exemption from disclosure to be narrowly construed in favor of disclosure. An exemption from disclosure must *specifically* exempt a record or part of a record from disclosure. A record or portion of a record must fit squarely within a specific statutory exemption in order to be withheld.

An agency cannot define the scope of a statutory exemption through rule making or policy. An agency agreement or promise not to disclose a record cannot make a disclosable record exempt from disclosure.

Exemptions are permissive rather than mandatory. Therefore, an agency has the discretion to disclose an exempt record. However, within an "exemption" an agency may waive, an agency cannot provide a record if a statute makes it "confidential" or otherwise prohibits disclosure. For example, some health care information – (it is generally prohibited to disclose medical information without the patient's consent). If a statute classifies information as "confidential" or otherwise prohibits disclosure, an agency has no discretion to release a record or the confidential portion of it. And it is important to remember that once you make the decision to disclose any information, it is forever public record. There are many exemptions to the PRA, and exceptions to the exemptions. Since there is always a reason someone is making a Public Records Request, it is strongly recommended that you involve legal counsel when complying with any Public Records Disclosure Request.

Clear as mud?? Bottom line --- involve your legal counsel or feel free to contact HARRP's Risk Manger, Al Alvarez or Claims Manager, Rick Gehlhaar, if you have any questions.

Coverage Concerns – Housing Previously Convicted Criminal Offenders



This year, the Washington State Senate passed the Substitution Senate Bill 6157 directed at reducing criminal offender recidivism by increasing access and coordination of offender services in local communities. The Bill proposes to accomplish its objectives through inventories of services and community transition coordination network programs. An important element of SB 6157 creates a pilot housing program for high-risk offenders who are homeless.

According to the Department of Corrections (DOC), approximately 8,500 offenders return to the community from Washington prisons each year after completing their sentences and over 25,900 offenders are currently on active supervision in the community. Research from the Washington State Institute of Public Policy (WSIPP) shows that approximately 90 percent of these offenders will recommit a crime and 54 percent will commit a new felony within 13 years. Further, the Washington Caseload Forecast Council estimates that under existing policies, Washington's incarceration rate will increase 23 percent by the year 2019. As a result of these studies the legislation established a Task Force to review offender programs, sentencing, and supervision of offenders upon reentry into the community with the stated goals of increasing public safety, maximizing rehabilitation of offenders, lowering recidivism, and a cost-beneficial policy option to alleviate the need to build more prisons. Included in the study were evidence-based public policy options to reduce future prison constructions, criminal justice costs and crime rates.

As a result of this Bill, local city and county entities are encouraged to collaborate with the DOC to establish networks to provide services to offenders returning to the community. Local Housing Authorities will be called upon to provide housing and other services to previously incarcerated offenders.

There has been concern expressed from some of HARRP's members about applicable HARRP coverage for potential liability arising from housing ex-offenders. If your agency is named as a defendant and it is alleged that your agency is somehow responsible for acts committed by an ex-offender (because you housed a known criminal) your HARRP coverage WILL provide for your defense.

The good news is that the Washington Ways and Means Committee was wise to include immunities to insulate entities against claims arising from this program. So, while HARRP will provide a defense for your agency against liability arising from this program, it appears that a quick dismissal of claims will be in order as long as your agency is following a few procedures outlined in SB 6157.

Brief Summary and Highlights of Washington SB 6157:

- SB 6157 creates a pilot housing program for high-risk offenders who are homeless and **protects landlords who rent to ex-felons from civil lawsuits.**
- Requires counties to set up community transition programs for offenders.
- Requires prison officials, in most instances, to release inmates to the county in which they were first convicted of a felony.
- Directs the State Community Trade and Economic Development (CTED) Department to create pilot programs in at least two counties to provide state-paid housing for high-risk inmates for as long as one year.
- **Insulates the state, cities, counties and nonprofits from lawsuits over offender wrongdoings unless officials are grossly negligent.**
- Orders a study to see whether work-release programs are effective.

- Requires eligible inmates to participate in drug treatment and education classes if they want to earn a 50 percent “good time” reduction in their sentences.
- Protects landlords from being sued over criminal conduct by a tenant as long as they disclose that they have a policy of renting to offenders.

An important section of SB 6157 is found in “Part VI – Housing: **A landlord who rents to an offender is not liable for civil damages arising from the criminal conduct of the tenant if the landlord discloses to residents that they have a policy of renting to offenders and takes steps to reduce or halt known criminal activity on the landlord's premises. Housing authorities are encouraged to formulate policies that are not unduly burdensome to previously incarcerated individuals.** CTED must establish a pilot program in a minimum of two counties to provide grants to eligible organizations to provide housing assistance to offenders reentering the community who are in need of housing. The pilot program must be operated in collaboration with a Community Justice Center (CJC), offer transitional supportive housing, and provide housing assistance for a period of time not to exceed twelve months. DOC is required to cooperate with organizations receiving grant funds to identify appropriate housing solutions, facilitate an offender's application for housing and assist the offender in accessing appropriate services. **The state and local entities providing housing assistance to offenders are not liable for civil damages arising from the criminal conduct of an offender solely due to the placement of the offender in housing.** An offender may obtain the release of funds from his or her personal inmate savings account prior to discharge for the purpose of securing appropriate housing.

As you can see, this is a very interesting pilot program. While this is a Washington State program, we believe that other western states have bills in the works, or we anticipate they will have similar legislation in the very near future. With the built-in immunities and your HARRP coverage, you should not be concerned about getting involved in these programs as long as you follow the requirements as outlined in the Bill. If you have any questions, feel free to contact HARRP's Claim Manager, Rick Gehlhaar, at telephone extension 106, or email him at rick@harrp.com.



NEW SOFTWARE

The HARRP Board of Directors has recently approved funding for an integrated risk management information system (RMIS). This system, called Risk 360, is a software suite that fully integrates the pooling administration.

Specifically designed for pools and the limitless ability pools have for adapting to unusual circumstances encountered in pooling, Risk 360 integrates all of its functions from a central core of data. This core data feeds all components of this system, to include:

Underwriting,
 Rates,
 Claims administration,
 Invoicing,
 Data (inventory) management,
 Financial report generation,
 A/P and A/R,
 Certificate of Insurance and Additional Insured Endorsement generation,
 Renewal capabilities on-line

HARRP has begun the transition from the current assortment of software programs to integration into Risk 360. HARRP plans to be completed with the integration into Risk 360 in late December and fully operational in March of 2008. The on-line renewal capabilities are slated for deployment in 2009.

The HARRP staff is very excited about the software; its accuracy, ease and full integration of all systems! As a member, you will see professional reports, timely invoicing, database management accuracy and ease of the renewal process.

CHANGES IN RENEWAL DATES

In conjunction with the integration of our RMIS, HARRP has determined that having common renewal dates for its members provides consistency for internal program administration and assists members with insurance cost allocations and budgeting.

HARRP's past practice has been when a member joins the pool, the effective date of coverage is the date on which they join. Of the 92 members in HARRP, there are 46 different renewal dates.

After careful consideration of multiple factors, HARRP has determined that offering four (4) renewal dates provides the consistency for internal administration considerations and flexibility for its members to choose which date best coincides with their internal programs. This change would also allow more uniformity with the auto coverage, which will remain on a quarterly billing cycle.

A questionnaire was sent to HARRP's members in June soliciting their preference on renewal date selection. With 65% response, the results are;

January 1 st	14	April 1 st	12
July 1 st	22	October 1 st	13

These changes will not be implemented until the 2009 renewal period. If you have any questions on how this change would be implemented, please do not hesitate to contact the HARRP office. Informational material on the conversion will be forthcoming in the second quarter of 2008.

CAPTIVE UPDATE

The HARRP Board of Directors met in a strategic planning session in June to discuss several new proposals and formulate ideas for the coming years.

HARRP has relayed to our members, through various meetings, association presentations, meeting minutes and other literature, our inability to insure tax credit properties. Additionally, HARRP has publicized its endeavors into the research and feasibility of establishing a captive.

A captive would allow HARRP to continue providing services and the competitive rates now enjoyed by the membership. What the captive formation allows is the ability for HARRP to insure, or reinsure, tax credit and non-profit housing where private sector funding is secured. A captive would need to be capitalized initially, which can be done by HARRP. There are several obstacles to making the captive a reality. HARRP, at least for a period of several years, would still require reliance on the commercial insurance markets until such time the captive secures enough volume and an AM Best rating.

The conversation and investigation continues on the captive formation. If you have any questions, you are encouraged to call the HARRP office.

Re-RATING

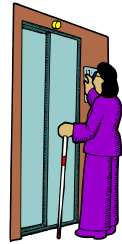
HARRP has performed preliminary investigation into simplifying the rating structure for the pool members. As you know, rates are set annually. These are baseline rates, modified by the selection of higher deductibles, low loss ratio credits, loss control credits or the Supplemental Underwriting Assessment (SUA).

The proposal before the HARRP Underwriting Committee and the Board of Directors is to provide the discounts currently given in the form of a three tier rating structure. Credits given for pro-active loss control, which fuels a low loss ratio, would be reflected in a "preferred" tier, which would be less than the base rates published annually. Those with high loss ratios would receive a rate higher than the baseline rates.

HARRP is working with our actuaries to determine thresholds and equality in the delivering of such a rating format. This proposal would simplify HARRP's internal administration procedures, reduce the confusion of credits currently experienced by our members and provide an incentive to reach the preferred rate by implementing various risk control tactics. These proposed changes would not go into effect until the January 2009 program year.



EQUIPMENT BREAKDOWN COVERAGE



HARRP is investigating enhanced coverages for 2008 to its coverage agreement. The coverages would be specific for equipment breakdown, or commonly known as Boiler and Machinery. Somewhat antiquated, Boiler and Machinery implies the coverage would be specific for fired pressure vessels only. Equipment Breakdown provides coverage for fired and non-fired pressure vessels and most all electrical equipment.

HARRP has been in negotiations with Hartford Steam Boiler, a leader in the coverage, to provide blanket coverage for the entire pool. The subject will be discussed at the next Underwriting Committee and, if approved, taken to the full Board for consideration.

Lead Paint is Nothing to Toy With Lead Paint Inspector Errors & Omissions Program



The News Media has recently reported on a recall of millions of toys manufactured in China. The toys contain lead paint and are a danger to children. Did you know that only specialized insurance policies insure the lead paint hazard? Even HARRP's coverage excludes Errors and Omissions or injuries from lead paint, as does the insurance on your tax credit and non-profit properties. With no coverage, there would be no duty to defend the allegation that lead was ingested from wall paint on your properties. One Housing Authority spent in excess of \$70,000 out of their own pocket to defend an allegation regarding an inspection in a previously abated unit. To fill this coverage gap, HARRP, with a Lloyds of London underwriter, have collaborated to combine their expertise, experience, and specialization to introduce an innovative nationwide Lead Paint Inspector Errors and Omissions Insurance program designed specifically for your "gap" in current insurance coverage.

This new insurance product provides that needed coverage. Unlike other products, our policy extends coverage to you solely for lead based paint inspections. In addition, underwriters have agreed to provide an optional coverage for claims arising out of mold inspections for an additional premium.

Should an inspector fail to detect the presence of lead (even in a previously abated unit) and a lead ingestion claim is later filed containing a request for damages for bodily injury and/or property damage, this policy will defend the claim. Standard General Liability and Errors and Omissions insurance policies exclude Lead Base Paint claims and allegations of bodily injury or property damage arising out of inspections.

This policy will cover HUD's required visual paint inspections and EPA or State certified Risk Assessor inspections, including HQS and Uniform Physical Condition Standards. Properties covered under this product would include any properties an insured lists on the application form as undergoing inspections including: Owned, Non-Owned, Tenant Based Section 8, managed properties and tax credit properties that are within each Housing Authority's inspection duties. Also included are inspections of units owned by other housing authorities, the city, county, state or nonprofit corporations and even scheduled commercial properties.

Policy Highlights include: Flexible Policy Limits: \$100,000 to \$1,000,000 with a duty to defend (buy what you need). Contingent Bodily Injury and Property Damage relating to covered professional services. Optional Mold Coverage sublimit: \$100,000 (subject to an additional premium).

Call HARRP for an application and quote.



WEBSITE REDESIGN



HARRP has performed extensive redesign of its webpage! You will soon find the updated webpage easier to navigate, helpful links to various resources, on line forms for submission, risk management resources and all the material you have relied on in the past and then some!

The updated webpage will be the new platform for the on-line capabilities of the new software program that HARRP has recently purchased.

The new page is slated for completion in September 2007.

PLEASE REMEMBER! When requesting Certificates of Insurance and/or Additional Insured Endorsements from HARRP, you will greatly decrease the turn-around time in document issuance by utilizing the request form from www.harrp.com! Thank you!