



Recommendations to help mitigate potential liabilities associated with the removal of tent cities themselves, those populating them, and the property that is left behind.

Encampments/Tent Cities:

Strategies to help municipalities manage the potential exposures



Connecticut Interlocal Risk Management Agency
545 Long Wharf Drive, 8th Floor
New Haven, Connecticut 06511
www.CIRMA.org

April 2020

Connecticut's *Homeless Person's Bill of Rights* law was enacted in order to protect the State's homeless population from discriminatory acts.

Introduction

The State of Connecticut was home to a homeless population of over 4,000 in 2019. This number has been increasing over the last decade, leaving room for the creation of encampments, or tent cities throughout the State. While Connecticut has enacted a *Homeless Person's Bill of Rights* there is still no clear and well-defined standards regarding how to effectively manage the removal of tent cities. The purpose of this white paper is to shed light on the risks associated with these tent cities and provide strategy to help municipalities manage the potential exposures they may face during the removal of these encampments on public land. The recommendations provided can help mitigate any potential liabilities that can be associated with the removal of the tent cities themselves, those populating them, and the property that is left behind.

Definitions

Encampments or Tent Cities are two frequently used terms used to describe self-sheltering communities created by homeless persons. These communities are proliferating across the state, and the country as a whole. Most of these communities are medium to large, ranging from 10 to 100 residents. These encampments are turning into somewhat permanent features of municipalities on publicly owned property. Throughout the State of Connecticut, homeless, tent-city residents are more commonly classified as squatters than tenants.

Squatter is defined as a person who is taking residence at an abandoned, foreclosed, or unoccupied building or area of land without the lawful permission from the owner. The person does not own or rent the property and has no contractual allowance to be there. Squatting is different than trespassing in the sense that trespassing is a criminal act while squatting is a civil act. The caveat to this is that squatting can be treated as criminal behavior if the property owner has made it known that the individual who is squatting is unwelcome. Squatters sometimes try and claim Adverse Possession to take ownership of these unused properties.

Adverse Possession is the concept of legally acquiring ownership of a piece of property based on continuous possession without the permission of the legal owner. Properties in Connecticut that are held by municipal and quasi-municipal corporations cannot be acquired by adverse possession even if the property has not explicitly been dedicated to public use.

Sweep is the term used to define the forceful clearing of belongings in an encampment. A large portion of these sweeps happen in areas that block public movement, like sidewalks. Initiating a sweep on an encampment without following proper protocol can lead to general liability lawsuits against a municipality due to the *Homeless Person's Bill of Rights* law that has been implemented in Connecticut.

CONNECTICUT'S HOMELESS PERSON'S BILL OF RIGHTS

The Connecticut *Homeless Person's Bill of Rights* law was enacted in order to protect the homeless population in the State from discriminatory acts. In June of 2013 this law was passed into legislation. The purpose of the bill is to 'guarantee that the rights, privacy and property of homeless persons are adequately safeguarded and protected under the laws of this State' and it includes seven different protections. The protections that are specifically stated in the legislation are listed below.

Each homeless person has the right to:

- Move freely in public spaces, including on public sidewalks, in public parks, on public transportation and in public buildings without harassment or

These encampments are turning into somewhat permanent features of municipalities on publicly owned property.

The purpose of the bill is to 'guarantee that the rights, privacy and property of homeless persons are adequately safeguarded and protected under the laws of this State' and it includes seven different protections.

There are ways that you can rightfully and legally protect your municipality from the risks that come from clearing out these encampments.

intimidation from law enforcement officers in the same manner as other persons.

- Have equal opportunities for employment.
- Receive emergency medical care.
- Register to vote and to vote.*
- Have personal information protected.
- Have a reasonable expectation of privacy in his or her personal property.
- Receive equal treatment by state and municipal agencies.

*The Connecticut Secretary of the State has published a Homeless Voter Fact Sheet. The fact sheet states what makes a homeless person eligible to vote, how to register to vote, how a homeless person can be a resident of a town, and what the acceptable forms of identification to vote are. Towns may be unclear regarding how homeless residents can vote without a permanent address. To provide clarity on this topic, the fact sheet states, "Courts have said that an individual is a resident of a town if they have some nexus to that particular town, and there is an intention to return to that town when absent from it. This could be some town that you have spent time in, slept in, and intend to go back to even if you are not presently there". This means that a homeless person can use a previous address, an address of an encampment, or anywhere that they consider their place of residency in order to register to vote.

Liability

The creation of the Connecticut *Homeless Person's Bill of Rights* is a forward piece of legislation and a positive change for the homeless citizens in the state. On the other hand, it has created complications for municipalities that are experiencing an increase in the establishment of these encampments. The risks associated with having encampments within municipalities include potential biohazardous issues, possible fire hazards, and unsafe conditions for those who are not familiar with the construct of the cities themselves. Sometimes the best route for these municipalities to take is to remove the tent cities completely. However, the Connecticut *Homeless Person's Bill of Rights* requires that municipalities use thoughtful consideration and planning regarding the removal of tent cities. Failure to do so could result in potential general liability exposures, including legal actions taken against the municipality for alleged violation of encampment residents' rights.

Recommendations

There are ways that you can rightfully and legally protect your municipality from the risks that come from clearing out these encampments. As a first tactic, municipalities can try to deter further encampment development by using proper signage. Areas that are most likely to be used to create homeless encampments are large public areas with some semblance of privacy, such as under a roadway or bridge. Signs indicating hours of operation or that loitering is not permitted can be useful for public properties that are at risk of the development of an encampment. Consulting with legal counsel to construct the proper wording for signage is always helpful.

In some cases, signage will not be enough to effectively deter the homeless from setting up these encampments on municipal property. It is then best to become familiar with squatters' rights in Connecticut and how to approach the eviction process from this perspective and how other states handle personal property that is left behind.

In Connecticut, homeless residents are not considered tenants because there is no payment exchanged for property or legal contracts executed between a property

The risks associated with having encampments within municipalities include potential biohazardous issues, possible fire hazards, and unsafe conditions for those who are not familiar with the construct of the cities themselves.

Criminal activity of any kind may be considered means for a sweep, however, to mitigate potential lawsuits, there are legal regulations that a municipality may follow.

By law, if a squatter in Connecticut does not fulfill requirements for adverse possession and refuses to leave the premises after being notified that their stay is unwelcome, they can be arrested as criminal trespassers.

owner and resident. Homeless residents who reside on the same property for consistent periods are considered squatters. In general, squatters have a right to file adverse possession claims. It is essential to know that adverse possession cannot be acquired when it comes to public property in Connecticut. Properties held by municipal and quasi-municipal corporations cannot be acquired by adverse possession even if the property has not explicitly been dedicated to public use. By law, if a squatter in Connecticut does not fulfill requirements for adverse possession and refuses to leave the premises after being notified that their stay is unwelcome, they can be arrested as criminal trespassers. Criminal activity of any kind may be considered means for a sweep, however, to mitigate potential lawsuits, there are legal regulations that a municipality may follow.

To legally remove a squatter from the premises you can follow the standard eviction process (Title 47a), starting with supplying a notice to quit to those residing in the encampment. According to Connecticut General Statute 47a-23 – a notice to quit must be served five days before the date specified as the last day to remain on premises in the notice itself. CGS 47a-23a-2 states who this applies to and section 2 states the following: “when such premises, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises”, this would include squatters (especially if there is signage indicating that there are hours where it is appropriate and when it is not appropriate to be there). The statute also added a provision (47a-23-b) giving direction on how to work the notice. It should be stated as – “(b) The notice shall be in writing substantially in the following form: “I (or we) hereby give you notice that you are to quit possession or occupancy of the (land, building, apartment, or dwelling unit, or of any trailer or any land upon which a trailer is used or strands, as the case may be), now occupied by you at (here insert the address, including apartment number or other designation, as applicable), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession or occupancy using the statutory language or words of similar import, also the date and place if signing notice). A.B.”. If the owner or lessor’s legal representative, attorney-at-law or attorney-in-fact knows of the presence of an occupant but does not know the name of such occupant, the notice for such occupant may be addressed to such occupant as “John Doe”, “Jane Doe” or some other alias which reasonably characterized the person to be served.”

If members of the encampment refuse to leave after receiving the notice, law enforcement must then notify encampment residents of the date and time they are to evict the property. After the amount of time given to them has passed, law enforcement can physically remove the squatter’s possessions per Connecticut general statute 47a-26d, and 47a-42 (further information on title 47a found in Appendix A).

Proper storage of the items found at these encampments may limit liability. Connecticut is yet to define a standard on how to handle possessions removed from an encampment. However, cities such as Seattle and Vancouver and the state of Oregon have explicitly defined their practices regarding this matter.

References from Seattle, Vancouver, and Oregon

The following are not endorsed best practices or recommendations. These alternative approaches simply serve as examples of initiatives that have proven successful in select municipalities.

To that end, Oregon requires that policies are created by their municipalities on how to implement a humane removal of homeless individuals and their property from camping sites on public property (ORS 203.077). The State’s policies have

Prioritization is completed based on how much of a risk the encampment is to the community.

“Taking pictures of the property that was stored and what was disposed of may be an added and effective way to document the steps the municipality takes to manage property.”

Mark Wolf, Oregon State Attorney

four steps outlined which include:

1. Notice
2. Contact of Social Services
3. Addressing of Public Property
4. Issuance of any Citations

An Oregon state attorney, Mark Wolf, published his recommendations based on Oregon case law on what to do and what not to do to remove property from the homeless encampments. His recommendations are as follows:

1. Store the removed property in a reasonable place for a fixed and noted amount of time (Oregon has stated this period to be 30 days, Vancouver has stated it to be 60 days, while Seattle set its time period to be 70 days).
2. Develop a system of communication between the town and encampment residents that can be used to identify and locate the stored personal property.
3. Document the actions of the municipality’s removal process. Create a way to maintain detailed records of any action that can help with a claim made against you. Consider putting a policy in place detailing:
 - a. When the notice to leave was posted
 - b. The location of all property when it was removed
 - c. What property was removed
 - d. What property was retained, where it was stored, and how long it will be stored
 - e. What property was thrown away and why

Wolf also states that taking pictures of the property that was stored and what was disposed of may be an added and effective way to document the steps the municipality takes to manage property.

Seattle has one of the largest populations of homeless encampments in the United States. The city of Seattle now has a protocol in place that works well for its citizens. The protocol has made it possible for them to humanely and efficiently remove encampments that pose a threat to their communities. The city has decided to create a task force regarding unsanctioned encampments in order to establish a cleanup protocols. Their protocols feature six different steps:

1. Reporting
2. Assessments
3. Prioritization
4. Scheduling
5. Notice
6. Storage

Prioritization is completed based on how much of a risk the encampment is to the community. The communities are prioritized based on raised health and safety issues, criminal behavior, and any obstructions they may cause. Based on this prioritization, the task force is to schedule when the tent city will be removed. Official notice is made at least 72 hours in advance with the time and date of cleanup. The storage step provides guidance on the day of cleanup itself. On the day of cleanup, the task force collects, inventories, photographs, and stores the belongings found in the encampment. Items are then sorted; residents have the ability to choose to be present if they prefer. All items are then placed into storage unless they are clearly refuse, hazardous, or criminal – these items will be disposed of. The task force also

By becoming familiar with the rights that homeless residents in Connecticut are entitled to, municipalities can manage the removal of tent cities and not violate inhabitants' rights.

posts information on how to retrieve the items from storage at the location of the disbanded encampments and on the community's website. The items are then stored for 70 days; if they are not claimed, the items are disposed of.

Conclusion

The encampments bring the potential for general liability lawsuits based on the violation of the Connecticut Homeless Person's Bill of Rights.

With the rapid increase of tent cities being constructed across the state and no clear and well-defined standards regarding how to effectively handle them, there are going to be possible liability exposures that surface. The encampments bring the potential for general liability lawsuits based on the violation of the Connecticut *Homeless Person's Bill of Rights*. There are times when the clearing of these encampments is the best chance to keep municipalities safe, healthy and clean. In some cases, something as simple as utilizing proper signage regarding hours of operations or loitering restrictions will be enough to keep these encampments off of municipal-owned land.

However, in cases where the signage is not enough, there are steps that municipalities can take to protect their communities. First by supplying the eviction notice, then waiting the time listed on the notice, and finally engaging law enforcement to proceed with the eviction process. By becoming familiar with the rights that homeless residents in Connecticut are entitled to, municipalities can manage the removal of tent cities and not violate inhabitants' rights. Several states have made significant progress in managing tent cities, leveraging special task forces and policy implementation initiatives dealing with the management of personal property that is left behind. All of these efforts are being made to help protect municipalities and its residents.

Appendix A

<https://law.justia.com/codes/connecticut/2012/title-47a/chapter-832/section-47a-42/>

"Connecticut General Statutes

Title 47a - Landlord and Tenant

Chapter 832 - Summary Process

Section 47a-42 - (Formerly Sec. 52-549). Eviction of tenant and occupants from residential property. Removal and sale of unclaimed possessions and personal effects.

Universal Citation: [CT Gen Stat § 47a-42 \(2012\)](#)

(a) Whenever a judgment is entered against a defendant pursuant to section 47a-26, 47a-26a, 47a-26b or 47a-26d for the recovery of possession or occupancy of residential property, such defendant and any other occupant bound by the judgment by subsection (a) of section 47a-26h shall forthwith remove himself or herself, such defendant's or occupant's possessions and all personal effects unless execution has been stayed pursuant to sections 47a-35 to 47a-41, inclusive. If execution has been stayed, such defendant or occupant shall forthwith remove himself or herself, such defendant's or occupant's possessions and all personal effects upon the expiration of any stay of execution. If the defendant or occupant has not so removed himself or herself upon entry of a judgment pursuant to section 47a-26, 47a-26a, 47a-26b or 47a-26d, and upon expiration of any stay of execution, the plaintiff may obtain an execution upon such summary process judgment, and the defendant or other occupant bound by the judgment by subsection (a) of section 47a-26h and the possessions and personal effects of such defendant or other occupant may be removed by a state marshal, pursuant to such execution, and delivered to the

place of storage designated by the chief executive officer for such purposes.

(b) Before any such removal, the state marshal charged with executing upon any such judgment of eviction shall give the chief executive officer of the town twenty-four hours notice of the eviction, stating the date, time and location of such eviction as well as a general description, if known, of the types and amount of property to be removed from the premises and delivered to the designated place of storage. Before giving such notice to the chief executive officer of the town, the state marshal shall use reasonable efforts to locate and notify the defendant of the date and time such eviction is to take place and of the possibility of a sale pursuant to subsection (c) of this section. Such notice shall include service upon each defendant and upon any other person in occupancy, either personally or at the premises, of a true copy of the summary process execution. Such execution shall be on a form prescribed by the Judicial Department, shall be in clear and simple language and in readable format, and shall contain, in addition to other notices given to the defendant in the execution, a conspicuous notice, in large boldface type, that a person who claims to have a right to continue to occupy the premises should immediately contact an attorney, and clear instructions as to how and where the defendant may reclaim any possessions and personal effects removed and stored pursuant to this section, including a telephone number that may be called to arrange release of such possessions and personal effects.

(c) Whenever the possessions and personal effects of a defendant are removed by a state marshal under this section, such possessions and effects shall be delivered by such marshal to the designated place of storage. Such removal, delivery and storage shall be at the expense of the defendant. If such possessions and effects are not reclaimed by the defendant and the expense of such storage is not paid to the chief executive officer within fifteen days after such eviction, the chief executive officer shall sell the same at public auction, after using reasonable efforts to locate and notify the defendant of such sale and after posting notice of such sale for one week on the public signpost nearest to the place where the eviction was made, if any, or at some exterior place near the office of the town clerk. The chief executive officer shall deliver to the defendant the net proceeds of such sale, if any, after deducting a reasonable charge for storage of such possessions and effects. If the defendant does not demand the net proceeds within thirty days after such sale, the chief executive officer shall turn over the net proceeds of the sale to the town treasury.

(1949 Rev., S. 8284; 1963, P.A. 479; P.A. 76-195; P.A. 79-571, S. 69; P.A. 84-146, S. 16; P.A. 87-507, S. 4; P.A. 97-231, S. 7; P.A. 00-99, S. 96, 154; P.A. 01-195, S. 44, 181; P.A. 10-171, S. 1.)

History: 1963 act deleted provisions applying section where personal effects are owned by one other than tenant, required immediate removal rather than within 24 hours and made technical changes; P.A. 76-195 inserted new Subsecs. (a) and (b) re defendant's removal from property and re duties of sheriff, deputy and town's chief executive officer, designated previous provisions as Subsec. (c), substituted "defendant" for "tenant" and "chief executive officer" for "selectmen" and specified that auction may not be held unless reasonable efforts have been made to notify defendant of sale; Sec. 52-549 transferred to Sec. 47a-42 in 1977 and internal references to sections revised as necessary to reflect their transfer; P.A. 79-571 added references to Secs. 47a-26a, 47a-26b and 47a-26d in Subsec. (a) and rephrased provisions; P.A. 84-146 included a reference to posting of notice on a place other than a signpost; P.A. 87-507 amended Subsec. (a) to include "any other occupant

For additional information on this topic, please contact your CIRMA Risk Management Consultant.

bound by the judgment by subsection (a) of section 47a-26h” and to add references to such “occupant” and amended Subsec. (b) to require the notice to include service of a true copy of the summary process execution upon each defendant and occupant, to add requirements re the form and format of the execution and to require the execution to contain a notice recontacting an attorney; P.A. 97-231 amended Subsec. (a) to limit applicability of section to judgments “for the recovery of possession or occupancy of residential property” and to authorize a sheriff or his deputy to remove the defendant or other occupant bound by the judgment; P.A. 00-99 replaced references to sheriff and deputy sheriff with state marshal in Subsecs. (a) and (b), effective December 1, 2000; P.A. 01-195 made technical changes in Subsec. (a) for purposes of gender neutrality, effective July 11, 2001; P.A. 10-171 amended Subsec. (a) to authorize state marshal to deliver tenant possessions and personal effects to place of storage designated by chief executive officer and delete provision re setting such possessions and effects out on the adjacent sidewalk, amended Subsec. (b) to add provision re delivery to designated place of storage and require summary process execution to include instructions re how and where defendant may reclaim removed possessions and effects, and made conforming changes in Subsec. (c), effective July 1, 2010.

Cited. 114 C. 441. Tenant, as used in this section, is to be taken in its general meaning of holder or possessor of land and applied to plaintiff who continued to hold possession of condemned land after title and right to possession had passed to highway commissioner. History of the statute. 159 C. 64.

Annotations to present section:

Cited. 225 C. 757. Cited. 237 C. 679.

Cited. 38 CS 70.”

The Connecticut Interlocal Risk Management Agency, CIRMA, is Connecticut’s leading provider of municipal risk financing and risk management services. A member-owned and governed agency, CIRMA provides high quality insurance for municipalities, school districts, and local public agencies. CIRMA operates two risk pools, the Workers’ Compensation and the Liability-Auto-Property pool. It also provides Heart & Hypertension claims services and claims administration and risk management services to self-insured municipalities. CIRMA’s financial strength enables it to provide assured rate stability, open availability, and expert risk management and claims services.

Encampments/Tent Cities: Strategies to help municipalities manage the potential exposures

© 2020 Connecticut Interlocal Risk Management Agency.

All Rights Reserved. This publication or any part thereof may not be reproduced, transmitted, or stored in any type of retrieval system by any means, electronic or mechanical, without prior written consent of the Connecticut Interlocal Risk Management Agency (CIRMA). This book is intended for the exclusive use of the members of CIRMA and for the employees of its members.

This publication is intended for general purposes only and is not intended to provide legal advice. If you have questions about particular legal issues or about the application of the law to specific factual situations, CIRMA strongly recommends that you consult your attorney.