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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

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E-Newsletter

Premises Liability

Premises liability concerns the legal responsibility of owners and occupiers of property for injuries sustained thereon. An occupier or possessor of land is treated in the same manner as a landowner in many situations. The actual liability of these individuals will vary depending on the rules and principles adopted in the controlling jurisdiction. In some states, the court will focus primarily upon the status of the injured visitor in determining the liability of the owner or occupier. In other states, the focus will be primarily on the condition of the property and the activities of both the owner and visitor.

In states that focus primarily upon the status of the visitor to the property, the plaintiff in a premises liability lawsuit is generally defined as either an invitee, a licensee or a trespasser. An invitee is someone who is expressly or impliedly invited onto the property of another. This invitation is generally held to carry with it the representation that reasonable care has been exercised to assure the suitability of the premises. Patrons of business establishments are invitees since their presence benefits the business owner as well as serves their own purposes. The owner owes the invitee the highest duty of care, which means taking every reasonable precaution to ensure the invitee's safety. A licensee enters the property for his own purpose and, as such, is present at the consent of the owner. Social guests visiting a private residence are often categorized as licensees. The owner is required to warn a licensee of hidden dangers, but not necessarily required to fix them.

Finally, a trespasser enters without any right whatsoever to do so. In the case of adult trespassers, the owner has no duty of care towards the trespasser and need not take reasonable care of his property or warn



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of hidden dangers. Even if the plaintiff is a trespasser, he may still be able to establish the owner had a duty to give reasonable warning to prevent injury, if the plaintiff can show that the owner knows it is likely trespassers will enter the property. This requirement only applies with respect to artificial conditions that the owner has either created or maintains which he knows may be likely to cause serious injury or death, and where he believes that potential trespassers will not discover the condition. If the condition is open and obvious, however, a landowner does not necessarily have to give warning to potential trespassers.

Children are owed a higher duty of care, regardless of whether they are considered trespassers. A landowner's duty to warn is different with respect to children. A child plaintiff in so-called "attractive nuisance" cases, will prevail if it is proven that

- the defendant knew, or should have known, that children are likely to trespass;
- the condition was likely to cause serious bodily injury or death;
- children were unlikely to discover the condition or appreciate the extremity of the risk;
- the defendant failed to give warning of the hazard;
- the defendant failed to exercise reasonable care in eliminating the danger; and
- the defendant's need to maintain the condition, and the burden of eliminating it, is insignificant when compared with the risk to children if the condition is kept.

In states where consideration is given to the condition of the property and the activities of the owner and visitor, a uniform standard of care is applied to both invitees and licensees. This uniform standard requires the exercise of reasonable care for the safety of the visitor, other than a trespasser. In order to satisfy the reasonableness standard owed to invitees and/or licensees, an owner has a continuing duty to inspect the property in order to identify dangerous conditions and either repair them or post warnings as appropriate. Owners can be found liable if they have either actual or constructive knowledge of a dangerous condition.



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In proving a premises liability case, a plaintiff needs to show that the standard of reasonableness required by an owner toward licensees (and in some states, both licensees and invitees) has not been met. This requires an examination of numerous factors including, among others, a review of the circumstances under which the visitor entered the property, the use to which the property is put, the foreseeability of the harm, the reasonableness of repair or warning, and the ease of accomplishing same.

Perhaps the highest hurdle that a plaintiff has to overcome in holding an owner of property liable for an injury is that of knowledge. The plaintiff must prove that the owner had knowledge of the condition, or should have had knowledge of the condition, in order for liability to attach. This is quite often difficult to prove.

Special rules of liability may apply in cases of lessors of property. The general rule holds that a lessor is not liable to a lessee, or anyone else, for physical harm caused as a result of a condition on the property. This general rule has numerous important exceptions. For example, a lessor is responsible for injuries that occur as a result of a latent defect that existed at the time the lessee took possession of the property of which the lessor knew or had reason to know. A latent defect is a concealed unreasonably dangerous condition, either artificial or natural. Similarly, if the lessor agrees to undertake a repair for the benefit of the lessee, it must be done in a non-negligent manner. Other, similar, exceptions may apply in circumstances such as where the lessor opens the property for the admission of the public or where the lessor maintains control of the premises.

One of the commonly used theories to limit the plaintiff's recovery is the invocation of comparative or contributory fault. A visitor has a duty, in most cases, to exercise reasonable care for his or her own safety. Where that care is not exercised appropriately, the plaintiff's recovery may be limited or reduced by an amount attributable to his or her own negligence.

Form: For Parents Seeking Legal Representation on Behalf of Their Children

To read and printout the Form please click below.

[For Parents Seeking Legal Representation on Behalf of Their Children](#)



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