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Premises Liability Who Is Responsible?

The legal theory of "premises liability" holds owners and occupiers of property legally responsible for accidents and injuries that occur on that property. The kinds of incidents that give rise to premises liability claims can range from a [slip and fall](#) on a public sidewalk to an injury suffered on a amusement park ride.

The liability of owners and occupiers of property will vary depending on the legal rules and principles in place in the state where the premises liability injury occurred. In some states, the court will focus on the status of the injured visitor in determining the liability of the owner or occupier. In other states, the focus will be on the condition of the property and the activities of both the owner and visitor. (Note: an occupier or possessor of land, such as an apartment tenant, is treated in the same manner as a landowner in many situations.)

Legal Status of Visitor: Invitee, Licensee, or Trespasser

In states that focus only on the status of the visitor to the property, there are generally four different labels that may apply: invitee, social guest, licensee, or trespasser. An *invitee* is someone who is invited onto the property of another, such as a customer in a store. This invitation usually implies that the property owner/possessor has taken reasonable steps to assure the safety of the premises. A *licensee* enters property for his own purpose, or as a social guest, and is present at the consent of the owner. Finally, a *trespasser* enters without any right whatsoever to do so. In the case of licensees and trespassers, there is no implied promise that reasonable care has been made to assure the safety of the property.

In many states that look to the legal status of the injured person, the trend is toward distinguishing only between those lawfully on the property (invitees, social guests, licensees) and those on the property illegally (trespassers).

Condition of the Property and Nature of Activities

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. An owner can be found liable if he or she has knowledge of a dangerous condition, fails to take reasonable steps to fix that condition (or warn visitors), and a visitor suffers an injury as a result.

Determining whether the standard of reasonableness required by an owner toward licensees (and in some states, both licensees and invitees) has been met requires an examination of numerous factors including:

- Circumstances under which the visitor entered the property;
- Use to which the property is put;
- Foreseeability of the accident or injury that occurred;
- Reasonableness of the owner/possessor's effort to repair a dangerous condition or warn visitors.

Trespassers on Property

With respect to trespassers, if the owner knows that it is likely trespassers will enter the property, he or she may be charged with a duty to give reasonable warning to prevent injury. This requirement applies only with respect to artificial conditions that the owner has created or maintains, and knows may be likely to cause serious injury or death. However, even in cases where there is a dangerous artificial condition, a landowner does not necessarily need to give warning to potential trespassers if the condition is obvious.

Children on Property

A landowner's duty to warn is different with respect to children who are not authorized to be on property. A property owner/possessor must give warning if he or she knows (or should know) that children are likely to be on the premises, and that a dangerous condition on the premises is likely to cause serious bodily injury or death. In order to find liability, the owner/

possessor's need to maintain the dangerous condition (and the burden of eliminating it) must be low when compared with the risk to children, and the defendant must have failed to exercise reasonable care to eliminate the danger or otherwise protect children.

Comparative Fault

One of the most commonly used limitations on a property owner/possessor's liability is the argument that the injured person was partially at fault for what happened. 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 his or her own negligence. Most states adhere to a "comparative fault" system in personal injury cases, meaning that an injured person's legal damages will be reduced by a percentage that is equivalent to his or her fault for the incident. So, if it is decided that an injured person was 25% liable for an accident, and the total damages were \$10,000, he or she will receive only \$7,500.

Lessors and Landlords

Special rules of liability may apply in cases of lessors (landlords) of property. The general rule holds that a lessor is not liable to a lessee, or anyone else, for physical harm caused by a condition on the property. This general rule is based partially on the lessor's presumed lack of control over the property once it is leased, but the 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 if the lessor knew or had reason to know of the defect. 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. Similar exceptions may apply in other circumstances, such as where the lessor opens the property for admission of the public, or where the lessor maintains control of the premises.

Getting Legal Help for a Premises Liability Injury

If you or a loved one has suffered a premises liability injury, you should speak with an experienced attorney to ensure that your legal rights to compensation are fully assessed and protected.

Click [here](#) to find an experienced injury attorney near you.

See also:

- [Premises Liability Claims Against the Government](#)
- [Premises Liability FAQ](#)
- [Premises Liability Resources](#)
- [Property Owners' Legal Duty to Prevent Injury](#) (Real Estate Center)

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