

Premises Liability (An Overview)

NEGLIGENT PROPERTY OWNERS BEWARE

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What rights does an injured person have when injured on the property of another? This question is often asked because of the many different kinds of injuries that occur as a result of negligence of property owners. The rights of injured victims in these “premises liability” cases will be discussed in this article.

Elements of a Claim

In premises liability cases, as in other negligence cases, an injured person must show the following in order to recover: 1) a duty owing for the property owner to the injured victim; 2) a breach of that duty; 3) a causal relationship between breach of duty and injury; and 4) damages. Generally, if the injured person can prove these elements, a personal injury claim can be successfully pursued.

In these cases one must first determine whether the injured person was an invitee, licensee or trespasser before determining the duty owed. An invitee is either a public invitee or a business invitee. A public invitee is a person who is invited to enter or remain on property as a member of the public, for a purpose in which the property is held open to the public. A business invitee is a person who is invited to enter or remain on property for the purpose of business dealings with the possessor of the property. A property owner owes an invitee the duty to maintain the property in a

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reasonably safe condition. The owner has a duty to exercise reasonable care to protect the invitee from unreasonable risks of injury that were known to the possessor or that should have been known in the exercise of ordinary care. Under certain circumstances this includes a duty to warn of dangerous conditions and to inspect to discover possible dangerous conditions. This high duty of care owed by a property owner to an invitee would apply, for example, when a person is injured at a business such as a store, gas station, shopping mall or office building. The law places a high standard of care on the business owner because that individual derives an economic benefit from the business dealings of persons coming onto the property.

In contrast to an invitee, a licensee is a person who, other than for a business purpose, enters another's property with the express or implied permission of the owner. A social guest is a licensee, not an invitee. Therefore, if a person goes to a friend's house for a visit, that person is considered a licensee, not an invitee.

A property owner owes a lesser standard of care to a licensee than an invitee. A property owner is liable for physical harm or injury caused to a licensee by a condition on the property if, but only if, the following three conditions are met; 1) the possessor knew or should have known of the condition and should have realized it involved an unreasonable risk of harm to the licensee, and should have expected that the licensee would not discover or realize the danger; 2) the property owner failed to exercise reasonable care to make the condition safe, or to warn the licensee of the condition and the risk involved; and 3) the licensee did not know or have reason to know of the condition and the risk involved. Note that the

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property owner owes no duty to the licensee to inspect to discover possible dangerous conditions.

A low duty of care is owed by the property owner to a trespasser. A trespasser is a person who goes upon the property of another without permission or invitation of the owner. If the property owner did not know and in the exercise of reasonable care could not have known of the presence of the trespasser on his/her property, the property owner owes no duty to either make the premises safe or warn the trespasser of conditions existing on the premises. Therefore, it is very difficult for an injured trespasser to prevail against the property owner in a premises liability case.

A slightly different duty is owed by the property owner with regard to accumulations of ice and snow that cause injury. A property owner must take reasonable measures within a reasonable period of time after an accumulation of ice and snow to diminish the hazard of injury to invitees. Therefore, a business owner cannot simply allow ice and snow to accumulate on the property and hope that no one is injured. If a property owner does not take reasonable measures to alleviate the dangers posed by ice and snow, the property owner will be liable for resulting injuries.

If the injured person can prove the elements discussed above, that person is entitled to an award of damages for things such as medical bills, lost wages and pain and suffering.

Common Defenses

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The most common defense that is used in premises liability cases is the defense of comparative negligence. Just as the law requires a property owner to use reasonable care, the injured person is also required to use reasonable care for his or her own safety. If the injured person acts unreasonably under the circumstances, that person may be charged with comparative negligence. The injured person's negligence does not bar a recovery against the property owner, but the total amount of damages to which the injured person would otherwise be entitled is reduced by the percentage that that injured person's negligence contributed to the injury. And, pursuant to a new law which went into effect in 1996, an injured person is not entitled to recover noneconomic damages if he or she is more than 50 percent at fault for the injury. Therefore, comparative negligence works as follows. If an injured person sustains damages in the amount of \$100,000, and the injured person is 20 percent comparatively negligent, the person's damages are reduced by 20 percent for a total damage award of \$80,000. If, on the other hand, the injured person is 51 percent negligent, and the property owner is 49 percent negligent, the injured person recovers no noneconomic damages but may still recover economic damages (medical bills and lost wages) which are reduced by the injured person's percentage of negligence.

Another defense that is frequently used in a premises liability case is the "open and obvious" defense. While the exact parameters of the open and obvious defense are being decided by the appellate courts, where a condition is open and obvious the scope of the property owner's duty is limited.

Conclusion

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If a person is injured as a result of a dangerous condition on the property of another, the injured person has legal rights that must be protected. An attorney should be consulted to determine what those legal rights are and whether or not a successful personal injury claim can be asserted.