



Homeowner's Liability/Safety

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Background

Premises liability involves the responsibility of property owners to maintain safe conditions for people coming on or about the property. Homeowners can be and often are held liable for injuries which occur on their property. If a person slips, trips, or falls as a result of a dangerous or hazardous condition, the property owner may be fully responsible. Property owners are generally held accountable for falls as a result of water, ice, or snow, as well as abrupt changes in flooring, poor lighting, or a hidden hazard, such as a gap or hard to see hole in the ground. Several categories of persons to whom a property owner may be liable exist, and the duties of protection owed to each group are specific.

Homeowner Liability

Invitees

Where a homeowner, by express or implied invitation, induces or leads others to come upon the premises for any lawful purpose, a duty to exercise ordinary care arises to keep the premises safe. The invitation may be express, implied from known and customary use of portions of the premises, or inferred from conduct actually known to the homeowner. Workers or contractors are typically considered invitees.

Licensees

A licensee is a person who has no contractual relation with the owner of the premises but is permitted, expressly or implicitly, to go on the premises. A social guest at a residence is normally considered a licensee. The homeowner is liable to a licensee only for willful or wanton injury. It is usually willful or wanton not to exercise ordinary care to prevent injuring a licensee who is actually known to be, or is reasonably expected to be, within the range of a dangerous act or condition.

Trespassers

Surprising to many homeowners is the fact that a duty is also owed to those without permission to be on the premises. A trespasser is a person who enters the premises of another without express or implied permission of the owner, for the trespasser's own benefit or amusement. The duty of the owner to a trespasser is not to prepare pitfalls or traps for the trespasser nor to injure the trespasser purposely. Once the owner is aware of the trespasser's presence or can reasonably anticipate such presence from the circumstances, (EVIDENCE of skateboarders in an unfinished swimming pool would fall into this category) then the owner has a duty to

exercise ordinary care to avoid injuring the trespasser.

Insurance Coverage

Homeowner's Insurance policies cover this form of legal liability in the event that anyone suffers an injury while on the insured property. Certain actions of the policyholder, which occur away from the insured property, may also be covered. Even if a house is under construction and has no contents to be protected, the homeowner should obtain liability insurance to protect against claims of workers and even trespassers.

When a homeowner purchases liability insurance, part of the insurance company's obligation is to provide a defense in the event of a lawsuit. Even though the insurance company selects the lawyer and must approve the payment of all legal fees and other expenses of the lawsuit, the lawyer represents the policyholder. Under most types of liability insurance, the insurance company has the contractual right to settle or defend the case as it sees fit. The homeowner has an opportunity to express opinion, but the company typically has no obligation to obtain the policyholder's consent or approval.

A suit against a homeowner may involve several different claims, some of which may be covered by the liability insurance policy and some of which may not be covered. The insurance company is obligated to provide a defense for any claim, which could be covered, but the company may not be obligated to pay the damages for certain types of claims. Since liability policies typically do not provide coverage for intentional acts, there may be a question as to whether the policyholder acted intentionally. Negligent or accidental acts are generally covered, however, papers filed in court might [ALLEGE](#) both negligent and intentional actions. In such a situation, the insurance company may send the homeowner a Reservation of Rights letter, a notice that the company is paying for the defense for the claim but is not agreeing that it is required to pay for any and all losses under the terms of the policy.

Limitations and exclusions can alter the provisions of coverage in a policy. A limitation is an exception to the general scope of coverage, applicable only under certain circumstances or for a specified period of time. An exclusion is a broader exception which often rules out coverage for such cases as intentional acts, when the policy covers damages due to negligent acts.

Insurance companies and policyholders have contractual obligations which must be satisfied to ensure resolution of claims. Insurance policies list specific things a policyholder must do in order to perfect a claim once a loss has taken place. These duties are known as contract conditions. Policies typically require an insured to give prompt notice of any loss or the time and place of an accident or injury. Liability claims require the policyholder to give the insurance company copies of any notices or legal papers received.

The insurance company may ultimately refuse to pay part or all of a claim. The insurance company may take the position that the loss is not covered by the policy, perhaps because it was the result of some intentional act. Or the insurance company may allege that the policyholder took some type of action that rendered the policy void. Because insurance policies are contracts and open to interpretation by the courts, policyholders may be able to use the legal system to reverse such decisions. If an insured homeowner opts to consult an attorney to pursue such remedies, the chosen attorney ought to be one other than the one hired by the insurance company to represent the homeowner.

Safety Considerations

In addition to considering the welfare of those in the home and visitors to the home, safety precautions can reduce potential liability for homeowner's and in some cases attention to these issues may even lower the cost

of homeowner's insurance.

Smoke Alarms and Fires

Fire kills more Americans than all natural disasters combined and over 80 percent of all fire deaths occur in residences. Direct property loss due to fires in the United States is estimated at \$8.6 billion per year. Cooking and smoking are the leading causes of residential fires, followed by heating fixtures. A smoke alarm is a battery operated or electrically connected device that senses the presence of visible or invisible particles produced by combustion and is designed to sound an alarm within the room or suite within which it is located. There are two types of household smoke alarms in common use: ionization and photoelectric smoke alarms. An ionization alarm uses a small amount of radioactive material to ionize air in the sensing chamber. As a result, the air chamber becomes conductive, permitting current to flow between two charged electrodes. When smoke particles enter the chamber, the conductivity of the chamber air decreases. When this reduction in conductivity is reduced to a predetermined level, the alarm is set off. Most smoke alarms in use are this type. A photoelectric smoke alarm consists of a light emitting diode and a light sensitive sensor in the sensing chamber. The presence of suspended smoke particles in the chamber scatters the light beam. This scattered light is detected and sets off the alarm. Smoke alarms should be maintained in accordance with the manufacturers' instructions. Occasional light vacuuming will keep the air vents clean. Long life smoke alarms have been designed to use lithium batteries where the battery life is predicted to last 10 years with the normal low battery drain of ionization smoke alarms. The smoke alarms are still designed to provide a low battery audible signal as the battery charge is reduced to a level that may make the smoke alarm inoperable. Although these batteries are designed to last 10 years, ongoing testing and maintenance is required as per manufacturers' instructions.

Furnace, Fireplace, and Chimney Maintenance

Carbon monoxide is an odorless, colorless gas that interferes with the delivery of oxygen in the blood to the rest of the body. This gas can impede coordination, worsen cardiovascular conditions, and produce fatigue, headache, weakness, confusion, disorientation, nausea, and dizziness. High levels result in death. The symptoms are sometimes confused with the flu or food poisoning. Fetuses, infants, elderly, and people with heart and respiratory illnesses are particularly at high risk for the adverse health effects of carbon monoxide. An estimated 1,000 people die each year as a result of carbon monoxide poisoning and thousands of others end up in hospital emergency rooms. Carbon monoxide is produced by the incomplete combustion of carbon-containing fuels including coal, wood, charcoal, natural gas, and fuel oil. It can be emitted by combustion sources such as unvented kerosene and gas space heaters, furnaces, wood stoves, gas stoves, fireplaces and water heaters, automobile exhaust from attached garages, and tobacco smoke. Problems can arise as a result of improper installation, maintenance, or inadequate ventilation.

Chimneys blocked by birds' or squirrels' nests can cause deadly carbon monoxide gas to enter a home. This danger can be lessened by having the chimney professionally cleaned each year. A carbon-monoxide alarm will provide added protection, but such alarms are not a replacement for proper use and maintenance of fuel-burning appliances. Proper placement of a carbon monoxide detector is important. Because victims of carbon monoxide poisoning will slip deeper into unconsciousness as their condition worsens, a loud alarm is necessary to wake them. Additional detectors on every level and in every bedroom of a home provide extra protection. Homeowners should not install carbon monoxide detectors directly above or beside fuel-burning appliances, as appliances may emit a small amount of carbon monoxide upon start-up. A detector should not be placed within fifteen feet of heating or cooking appliances or in or near very humid areas such as bathrooms. Carbon monoxide rises with warmer air temperatures and so mounting the device on or near the ceiling is often recommended.

Swimming Pools

Drowning is the second leading cause of unintentional injury-related deaths to children ages 14 and under. A temporary lapse in supervision is a common factor in most drownings and near-drownings. Child drownings can happen in a matter of seconds—in the time it takes to answer the phone. There is often no splashing to warn of trouble. Children can drown in small quantities of water and are at risk in their own homes from wading pools, bathtubs, buckets, diaper pails, and toilets as well as swimming pools, spas, and hot tubs. Pool and spa owners can take practical steps to make their pool and spa less dangerous and reduce their potential liability.

All doors which give access to a swimming pool should be equipped with an audible alarm which sounds when the door and/or screen are opened. The alarm should have an automatic reset feature. The alarm can be equipped with manual means, such as touchpads or switches, to temporarily deactivate the alarm for a single opening of the door from either direction. This arrangement allows adults to pass through without setting off the alarm. Such deactivation should last for no more than 15 seconds. The deactivation touchpads or switches should be located at least 54 inches above the threshold of the door.

A non-climbable, five-foot fence that separates the pool/spa from the residence should be installed. Openings should be no more than four inches wide so children cannot squeeze through the spaces. A fence or barrier completely surrounding the pool can prevent many drowning accidents. The area adjacent to the outside of the fence must be free of objects such as chairs, tables, and playground equipment that children could use to climb over the fence. Other safety measures can include:

- Self-closing and self-latching gates and doors leading to the pool should have latches above a child's reach. Gates should open outward.
- Pool safety covers can be installed. Power operated covers are the safest and easiest to use.
- A telephone can be installed near the pool. Emergency numbers as well as the address of the property should be posted near the phone so that it is visible to callers.
- Constant supervision of swimmers of all ages is the most effective means of drowning prevention.

Wiring Systems and General Maintenance

The improper use of extension cords can cause shocks, fires, and other electrical hazards, which is another area of potential danger and liability for homeowners. Electrical cords and wiring systems should be inspected on a periodic basis. General maintenance, not only for electrical devices, but for other items and conditions which may be unsafe or dangerous, is helpful to prevent potential liability.

Additional Resources

A Glossary of Insurance, Development and Planning Terms. Davidson, Michael, American Planning Association, 1997.

The Legal Edge for Homeowners, Buyers, and Renters. Bryant, Michel J., Renaissance Books, 1999.

Organizations

Environmental Health Center

1025 Conn. Ave., NW, Suite 1200

Encyclopedia of Everyday Law: Homeowner's Liability/Safety

Washington, DC 20036 USA
Phone: (202) 293-2270
URL: <http://www.nsc.org/ehc.htm>

National Safety Council

1121 Spring Lake Drive
Itasca, IL 60143 USA
Phone: (630) 285-1121
Fax: (630) 285-1315
URL: <http://www.nsc.org/index.htm>

National Swimming Pool Foundation

PO Box 495
Merrick, NY 11566 USA
Phone: (516) 623-3447
Fax: (516) 867-2139
URL: <http://www.nspf.com/>

U. S. Fire Administration

16825 S. Seton Ave
Emmitsburg, MD 21727 USA
Phone: (301) 447-1000
URL: <http://www.usfa.fema.gov>

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