

CONSTRUCTION LAWLETTER

For Industry Professionals, Officers, Managers, Trades and Suppliers

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LANDLORD LIABILITY, PROPERTY MAINTENANCE AND INSURANCE COVERAGE

(Part 1 of 2.)

Protection from liability resulting from tenant and visitor injuries is a **VERY** important property owner objective.

Query: When is a landlord liable for injuries to a tenant or visitor to rental property? How may landlords minimize risk and financial loss for repairs and maintenance? What insurance is available to reduce risk and loss in rental properties business?

Answer: To be held responsible (liable) for an injury on the premises, the landlord or property manager must have had knowledge of the defect and was negligent in correcting the defect or in maintaining the property, and that negligence must have proximately (directly) caused the injury, and all of the following must be proven for a landlord to be held liable:

- It was the landlord's responsibility to maintain the portion of premises that caused the accident.
- The landlord failed to take reasonable steps to avert the accident.
- Fixing the problem (or at least giving adequate warnings) would not have been unreasonably expensive or difficult.
- A serious injury was the probable consequence of not fixing the problem (the accident was foreseeable).
- The landlord's failure -- negligence -- caused the tenant's accident.
- The tenant was genuinely hurt. For example, if a tenant falls and breaks an ankle on a broken or missing front door step, the landlord will be liable if the tenant can show all of the following:

It was the landlord's responsibility to maintain the steps (this would usually be the case, because the steps are part of the common

area, which is the landlord's responsibility). N.B.: Natural accumulations of ice and snow may be important exceptions.

The landlord failed to take reasonable measures to maintain the steps (for days or weeks, not if it had only been broken for minutes).

A repair would have been easy or inexpensive (fixing a broken step may have been a minor job).

The probable result of a broken step is a serious injury, and it was foreseeable (falling on a broken step is highly likely). The broken step caused the injury (the tenant must be able to prove that he/she fell on the step and that the broken step is where he broke his ankle). However, a legal defense may be raised that the defect was open-and-obvious and should have been avoided.

The tenant was really hurt (as in the case of a broken bone). An injured may file a personal injury lawsuit for medical bills, lost earnings, pain and other physical suffering, permanent physical disability and disfigurement, and emotional distress, and loss of consortium (of spouse or child). Suit may also include damages to personal property, a stereo or car, that results from faulty maintenance or unsafe conditions of real property. * * *

(To be continued / concluded in next issue.)

**"Too bad all the people who know
how to run this country are busy
running taxicabs or cutting hair."**

--George Burns 1896-1996

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