Need Help Navigating a Premises Liability Claim? Here's Some Practical Advice for Multifamily Housing Owners

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As we enter the peak summer months, multifamily housing owners are sure to face the usual wave of injury claims that occur on their premises. Playground mishaps, parking lot slip-and-falls, and swimming pool accidents are all on the horizon. Premises liability is a crucial aspect of personal injury law that governs property owners' potential liability for accidents and injuries that occur on their property. Multifamily housing owners and operators should understand the basics of premises liability to assist them in potentially limiting their risk for personal injury claims. Here are a few basic things that all multifamily housing owners and operators should keep in mind this summer.

What is Premises Liability and How Does It Work?

Premises liability refers to the legal responsibility that a property owner or occupier has for injuries or accidents that occur on their property. In most jurisdictions, the legal "duty of care" that a property owner owes to visitors varies based on the visitor's status: invitee, licensee, or trespasser. As a result, the specific obligations owed to these individuals differ, affecting how premises liability claims are evaluated.

Invitees are individuals who enter the property for business purposes, such as customers in a store. Property owners owe a high duty of care to invitees; this duty generally includes inspecting and maintaining the premises and addressing potential hazards. Similarly, licensees are social guests or individuals who enter the property for their own purposes but with the owner's permission, such as a visitor at a friend's house. Owners must ensure that their property is reasonably safe and warn licensees of any known dangers, but are generally not required to inspect their property for unknown hazards.

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Trespassers are individuals who enter the property without permission. While property owners only owe a minimal duty of care towards trespassers, they must refrain from willfully causing harm. Additionally, in some cases, property owners must address "attractive nuisances" that may prompt minors to trespass onto the property where they can suffer injuries, such as playground equipment and swimming pools.

Beyond these basic categories, however, many jurisdictions hold that landlords owe an even higher duty of care to their tenants. This heightened duty often includes the responsibility to perform regular inspections, promptly address maintenance issues, and ensure the premises are safe and habitable according to local housing codes. Landlords may also be held liable for failing to address known hazards or for violating building regulations that result in tenant injuries.

To be successful in a premises liability claim, the injured party must typically prove that the property owner violated one of its legal duties with respect to the property, that this negligence directly caused the injury, and that the injured party suffered damages as a result.

Common Ways Premises Liability Claims Arise in Multifamily Properties

Premises liability claims can arise from various situations, and understanding these common scenarios can help multifamily property owners take preventative measures to mitigate injury risks. Some common scenarios for premises liability claims are:

- Slip and Fall Accidents. One of the most common claims, these occur when a person slips, trips, or falls due to alleged hazardous conditions like wet floors, uneven surfaces, icy sidewalks, loose carpeting, poor lighting, or a combination of these factors.
- Inadequate Security. Property owners can be held liable if a lack of proper safety measures, such as locks, surveillance cameras, or security personnel, leads to injuries or assaults.

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This is particularly relevant for apartment complexes and parking garages.

- Dog Bites and Animal Injuries. In some cases, property owners can be held responsible if a tenant's dog or another animal bites or injures someone on their property and the property owner knows the animal has a history of aggressive behavior, has previously bitten someone, failed to conduct an adequate background check, or if the incident occurs in a common area of the property.
- Swimming Pool and Playground Accidents. Drowning or near-drowning incidents can occur if swimming pools are not adequately secured. Likewise, playgrounds can present a variety of injury risks, such as falls from equipment, entanglement hazards, and accidents resulting from playground structures that are not regularly maintained and consequently degrade over time.
- Environmental Hazards. Property owners can be held responsible for exposing tenants to environmental hazards causing health injuries such as mold, lead-based paint, asbestos or radon.

How Multifamily Housing Owners can Mitigate Premises Liability Risk

Multifamily housing owners have many tools at their disposal to help lower their potential exposure for premises liability including:

- Conducting regular inspections and maintenance to identify and detect potential injury sources.
- Addressing any identified hazards promptly. Fix broken stairs, repair uneven surfaces, plow snow and salt sidewalks, and ensure that all safety features, such as handrails and locks, are functioning properly.
- Implementing proper warning safety measures, such as clear signage, adequate lighting, and security systems.
- Ensuring that walkways and common areas are free of obstructions and tripping hazards.

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- Providing adequate training to staff on safety protocol and emergency procedures.
- Keeping detailed records of inspections, maintenance, and any incidents that occur on the property.
- Forbidding tenants from keeping aggressive dogs or other animals on the property.
- Staying up to date on legal codes and requirements. Be familiar with building code requirements and ADA requirements to ensure your premises complies with all laws, codes, and regulations.

Additionally, beyond preventative measures, multifamily property owners can take steps now to "soften the blow" if or when a premises liability claim arises:

- If you contract for property maintenance, such as swimming pool services, playground repairs, or general property upkeep, make sure your agreement contains a robust indemnification provision in your favor. Strong indemnity language helps shift liability away from the property owner and towards other responsible parties.
- Review and update your general liability insurance coverage. Make sure your policy limits are set appropriately to cover any potential hazards on your premises.

What Should Premises Owners Do When an Accident Occurs?

If an accident occurs on your multifamily property and you suspect a premises liability claim may be filed, be prepared to take the following steps as soon as possible:

- Seek Legal Counsel. Consult with an experienced premises liability attorney to understand your legal rights and obligations. An attorney can help you navigate the legal process and build a strong defense.
- Gather and Preserve Evidence. Collect and preserve any evidence related to the incident, such as surveillance footage,

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photographs of the accident scene, and maintenance records as soon as possible. Witness statements can also be invaluable.

- Notify Your Insurance Company. Inform your insurance carrier about any claim as soon as possible. They will guide you through the claims process and provide coverage based on your policy.
- Work With Your Attorneys and Adjusters. Assist in any investigations conducted by your insurance company or legal representatives. Provide all requested information and documentation promptly.
- Review Safety Procedures. Evaluate your current safety protocols and procedures to identify any areas that need improvement. Implement necessary changes to prevent future incidents.

Premises liability is a critical aspect of multifamily housing ownership that requires vigilant attention to safety and legal responsibilities. By understanding how premises liability works, recognizing common sources of claims, taking proactive steps to mitigate risks, and knowing what to do if a claim is filed, multifamily housing owners can better protect themselves and their tenants/visitors. Prioritizing safety and preparedness not only helps to avoid or reduce legal troubles, but also ensures a safer environment for everyone. Implementing robust safety measures, maintaining clear records, and staying informed about legal obligations are essential components of effective premises management.

Frost Brown Todd counsels investors, developers, insurers, and other key stakeholders on multi-family housing transactions in states across the country. We remain at the forefront of all critical issues affecting the multifamily housing industry, and we are ready to assist clients with navigating this rapidly changing environment. For more information, please contact the authors of this article or any attorney of Frost Brown Todd's Multifamily Housing Industry Team or the Product, Tort, and Insurance Defense practice group.

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