

Avoiding Frequent Liability Pitfalls in Common Areas

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Claims against apartment complexes, management companies, extended-stay lodging facilities and condominiums make up a significant portion of personal injury claims and lawsuits. While providing residents and guests with safe and secure rental units is a top priority, maintaining common areas should be equally important. Maintenance efforts will not only add value and desirability to the property, but will reduce the likelihood for injury. From debris to broken handrails to poorly lit walkways, failing to reasonably maintain common areas may create potentially dangerous conditions, which may lead to injuries, resulting in claims or lawsuits. Defending against these liability claims can be costly and time consuming, not to mention disruptive.

It is implausible to assume that all accidents and injuries can be prevented. But understanding how to prevent and defend against claims is an invaluable resource for any property. Knowing that the occurrence of an incident does not typically equate to liability will also help to establish reasonable maintenance practices to reduce liability risks. When an injury claim is made, the burden rests with the claimant to establish negligence by proving that the unreasonable actions of the property's owner or management company were cause of injury. Establishing reasonable maintenance practices provides a key advantage, saving significant time and headaches when faced with a claim.

Keep written records

Most residential properties have procedures in place to respond to resident and guest complaints within rental units. This provides means to track both complaints and repairs within the units. Less common, however, are written logs or work orders for common areas. Often, maintenance staff will repair and maintain common areas on an "as needed" basis, without any reporting mechanism. Failing to maintain written records detailing significant maintenance efforts in common areas could hinder your defense to a liability claim.

While not every bulb changed or piece of debris needs to be documented, daily inspection logs or documents of significant improvement efforts, such as painting or fixing loose or broken handrails, should be completed. Otherwise, it may be difficult to prove that a condition had previously been repaired, or alternatively, that no such repairs were needed. Both the existence of written policies, as well as documentation showing compliance, are effective tools in establishing reasonable maintenance practices. Diligence with maintenance procedures will also strengthen the defenses to any claim as it will make the claimant's job much more difficult.

Provide staff training

While having maintenance policies and procedures in place is crucial, ensuring that employees are educated, trained and following them is critical. It is up to management to routinely train and remind staff of policies. Holding safety meetings monthly, quarterly or

even semi-annually, provides a reasonable means to ensuring safety procedures are not only in place, but actually in practice.

In addition to written records, employees familiar with the property are often a valuable resource when defending against claims. Because maintenance staff and leasing agents routinely walk the property, they could easily be the best source of information when establishing defenses. Maintenance employees routinely walk sidewalks, stairwells and breezeways checking for trash, replacing bulbs and responding to residents' requests, while leasing agents visit common areas such as the pool, laundry facilities and other "clubhouse" amenities while showing the property. Familiarity with these areas will not only serve as a constant reminder to keep them visually appealing for residents and guests, but will result in familiarity with the condition of the common areas as well. These employees are often in the best position to discuss the state of the property around the time of an incident.

Incident reports are crucial

Because many claims are made months, or even years, after an incident, employees with valuable information may no longer be employed at the property, or may be unavailable. In that instance, written records will again become crucial in defending against claims. Therefore, beyond maintenance records, the single most important document to maintain is an incident report, together with the records of any post-incident investigations.

Creating an incident report immediately after an incident is reported is crucial to ensure no details are omitted. If no formal incident report form is available, a hand- or type-written account of the incident should be created as soon as possible, with specific details about what happened and from whom the information was obtained. If possible, have the claimant write a separate statement about the incident to help keep details clear should litigation ensue. Photographs of the area should also be taken and attached to the report to depict any property condition, or lack thereof. If employees are sent to investigate an incident after a fall is reported, each should also prepare a written statement as to their findings.

It's impossible to foresee and prevent all incidents. However, heeding these risk management practices can help to reduce the number of incidents and assist property owners, claims personnel and lawyers in evaluating and resolving injury claims and, when necessary, help reduce the resources spent defending them.



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