

Premises Liability: Keeping Your Business Out of the Courtroom

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Orlando Business Journal

May 17, 2013

Every business aims to provide a safe, enjoyable experience for its customers, but sometimes accidents happen. So it's important to know the steps businesses can take to avoid unnecessary claims.

That's because a personal injury claim can present a significant disruption and financial burden.

Premises liability claims arise from:

- Things such as spills or debris on the floor which may pose slip or trip hazards.
- Issues such as leaky roofs, cracked walkways or holes in an athletic field.
- Potential inherent risks stemming from an activity such as dark movie theaters or sports activities.

But just because an accident occurs doesn't necessarily mean the firm is liable.

A premises owner generally must maintain its premises in a reasonably safe condition; and warn of hidden dangers about which it knows or should know. That encompasses a variety of responsibilities, including employee training, proper staffing, regular inspections, preventive maintenance and timely repairs.

Written policies and procedures for identifying and correcting hazards can promote a culture of safety and help establish that a business is using reasonable care. Often policies will explain who

should inspect the premises and how often, what types of conditions to look for and what to do in response to those conditions.

The specifics of the policies will be dictated by type of operation, the size of the premises, the nature of the operation and the resources available. They can be communicated to employees through classroom study, computer modules, manuals, videos, staff meetings, shadowing more experienced employees, reviews with management, bulletin board postings, etc.

Violations of internal policies can be used as evidence of negligence. Thus, policies and procedures should be enforced. Inspection and maintenance logs are useful ways of monitoring and proving compliance.

In the event of an accident, the response should be professional and courteous. Many times injured people will retain attorneys simply because they feel mistreated. If possible, have the injured person write exactly what happened, including a description of the injuries. This will prevent the customer from later changing his story. Witness and employee statements also should be taken.

If an employee inspects an area five minutes before a slip and fall and there was nothing on the floor at that time, documenting who the employee was and his findings is critical. Similarly, if several employees respond and determine there were no hazards present, their findings should be documented.

Fraudulent claims do exist, and surveillance systems can help deter those. Documenting the accident scene with photographs also can be helpful.

Losing or destroying evidence can expose a business to claims of spoliation, so preserving such evidence is extremely important. Do not ignore letters from attorneys requesting preservation of evidence.

If your business operates an activity with inherent risks, obtaining valid pre-participation releases from participants can reduce the chances of being sued for accidents.

Businesses also can help avoid litigation through agreements with third parties, such as properly drafted indemnity clauses. Similarly, lease agreements clearly should designate whether

the landlord or the tenant will be responsible for different aspects of premises maintenance. Courts routinely find improperly drafted agreements limiting or shifting liability to be unenforceable, so consult with an attorney to ensure these important documents will be valid. Maintaining proper insurance also is imperative to protecting the assets of your business. Most commercial general liability contracts will provide for defense and indemnity in the event of a premises liability claim. In the event of a potential claim, promptly notify your insurance company so it can begin the investigation.



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