



Watch Where You're Going! Landowner Liability Under Minnesota Law

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From ice build-up and uneven cement outside to top-heavy bookcases and flights of stairs inside, your property ownership opens you up to a world of negligence liability every time someone steps foot on your property – whether or not they were invited. Accordingly, it is important to be aware of and understand the basic tenets of landowner liability so that you can limit any potential exposure as much as possible.

This article will first lay out the general rule regarding landowner liability and then go on to address three of the most significant exceptions to this rule: (1) knowledge of the condition, (2) “known or obvious” dangers, and (3) weather-related conditions. The final section will briefly deal with leased properties and a landlord-landowner’s duties to tenants and third parties.

General Rule – Duty of Reasonable Care. Generally speaking, a possessor of property has a duty to an entrant to use reasonable care to protect him or her from unreasonable risk of harm. However, an entrant on another's property also has a duty to use reasonable care for his or her own safety while on the premises. As used in this article, “entrant” includes both social guests and business invitees; the term does not include trespassers. “Reasonable care” is defined to mean the care you would expect a reasonable person to use in the same or similar circumstances. Considering the uncertainty of this standard, Minnesota has articulated a number of considerations that figure into a determination of “reasonable care,” including: (1) the circumstances under which the entrant enters the land (i.e. whether they are a licensee or invitee); (2) foreseeability or possibility of harm; (3) duty to inspect, repair, or warn; (4) reasonableness of inspection or repair; and (5) opportunity and ease of repair or correction.

As an example, consider a house with a wooden front porch and steps that appear to be in good condition, but unbeknownst to the entrant, two weeks earlier, one of the steps broke. At the time, the landowner simply removed the broken step and laid a new board where the old one was. The new board was not nailed down or affixed to the stairs in any way. On the day of the accident, a guest of the landowner arrived with a large platter of food. She stepped up, but did so unevenly and only caught the front edge of the board. As the step flipped up, the guest lost her footing and having no hands free, fell backwards with full force. In applying the above considerations it would appear that the landowner failed to exercise reasonable care as: (1) the entrant was an invited guest, (2) the nature of her injury should have been foreseeable – people will often not step evenly in the middle of a step, and (3) the landowner had ample opportunity to perform an easy and reasonable repair to a dangerous condition, which would not necessarily be apparent to entrants.

A landowner’s duty to trespassers is less than that owed to social guests or business invitees, but it is not non-existent. In Minnesota, a landowner will be liable only for failing to exercise reasonable

care to warn trespassers about hidden, artificial dangers created or maintained by the landowner. Whether a condition was hidden or concealed depends on the visibility of the condition, not on whether the injured party actually saw the danger. If a brief inspection would have revealed the condition, it is not concealed. Accordingly, landowners are not liable to trespassers for (1) natural dangers; or (2) non-hidden/readily visible dangerous conditions. Liability with regard to trespassers may differ in situations where trespassing is frequent and known of by the landowner, as well as in some situations where the trespassers are children.

Exceptions to the Rule. First, a landowner must have either actual or constructive knowledge of a dangerous condition before liability can be imposed. It is, however, important to remember that “constructive” knowledge is a broad category and will likely include conditions that the landowner could have become aware of following a reasonable inspection of the premises.

The second exception concerns known or obvious dangers. To put it simply, there are some dangerous conditions that are so commonly understood as dangerous and/or are so obvious to entrants, that a landowner is relieved of his duty to protect entrants from harm resulting from these conditions. The basic idea here is that because of the obviousness of the danger, it would be unreasonable or absurd to expect the landowner to either warn the entrant or correct the condition. In such instances, the entrant is deemed to know of the potential for danger and use reasonable care to avoid harm. However, a landowner will remain liable if, despite the obviousness of the danger, the landowner should have anticipated that an entrant could suffer harm as a result of the condition. Application of the “known and obvious” exception is therefore a two-part test: (1) was the condition known or obvious?, and (2) is there a reason why the landowner should have anticipated harm would result in spite of the condition’s obviousness?

This two-part test has been applied repeatedly in Minnesota courts. Perhaps the best example is from a 2004 Eighth Circuit case applying Minnesota law, Engleson v. Little Falls Area Chamber of Commerce, 362 F.3d 525, 528-9 (8th Cir.2004). Engleson dealt with a pedestrian who tripped over a bright orange, 28-inch cone intended to separate pedestrian traffic from vehicular traffic at a city fair. The court held that the municipality did not have a duty to warn the pedestrian of the condition, as the condition itself was the warning. Another seemingly clear case comes from Baber v. Dill, 531 N.W.2d 493, 496 (Minn.1995), where the court held that a possessor could not anticipate that an invitee would impale himself on rods that the invitee had helped to install.

Unfortunately, not all “known or obvious” cases are so straightforward and determinations often turn on the specific circumstances surrounding the accident. One consideration that often comes up is the potential for distraction. A good example of the application of the distraction argument is in the department store setting where an obvious dangerous condition or obstacle is placed nearby a display that is intended to attract the attention of customers. In such a situation, the possibility that a customer would become distracted by the display case and suffer harm as a result of the dangerous condition should be apparent, such that the store may be liable for the customer’s injuries. By and large, the “distraction theory” has primarily been applied in public settings with individuals unfamiliar with the surroundings.

The third large exception to landowner liability is especially important here in Minnesota, as it

has to do with the landowner's duty to entrants with regard to clearing/remediating weather-related conditions, such as ice and snow. Generally speaking, a landowner has a reasonable amount of time after the end of a storm to remove ice and snow from their property. The principle behind this rule shares that of the "known or obvious" exception: during a storm, the danger of slipping on ice or snow should be obvious to an entrant and they proceed at their own risk. Further, it would be unreasonable and impractical to expect a landowner to continuously clear his property during a storm. Once the storm (or other weather condition causing event) has passed, however, a landowner does have a duty to protect entrants from harm by clearing any ice or snow build-up that could endanger entrants. Accordingly, in order to best protect yourself from liability, sidewalks and outdoor stairs should be well-shoveled and/or salted following an ice or snow event.

Landlord-landowner Liability. Generally speaking, landlords owe no duty of care to their tenants and are not liable for damages caused by defective conditions on the leased premises. However, there are a number of exceptions to this rule that allow for a duty on the part of the landlord if the landlord (1) has willingly undertaken to repair the premises and done so negligently; (2) retains control of certain areas of the premises – i.e., common areas in an apartment or condominium complex; or (3) is aware of a hidden hazard on the premises but the tenant is not. Recently, the Minnesota Court of Appeals addressed landlord liability for the death of a child who had fallen out a screened window. White v. Many Rivers W. Ltd. P'ship, A10-1575, 2011 WL 1642618 (Minn. Ct. App. May 3, 2011). The court held that when applied to the facts of the case, none of the above exceptions applied, and the landlord had no common-law duty to install window screens that could withstand the force of a child and prevent his accidental fall.

The court stated that the landlord's duty is not to make improvements to the safety of the thing repaired exceeding the safety standards otherwise imposed by law. So, unless the Whites could establish that the screens were originally designed to contain a child and that the landlord's repairs unreasonably controverted that design, the negligent-repair exception would not apply and would not create a duty. The Whites were unable to make such a showing. However, it is important to remember that just because no common-law duty exists, a duty may arise from an express agreement. In other words, if a landlord expressly agrees to maintain a part of the leased premises, a contractual duty of reasonable care would be created, which would fill-in for lack of a common-law duty of care.

The court next addressed the second possible exception, but found that just because the landlord painted the windows and addressed tenant complaints, the landlord did not retain the requisite level of "control." The exception arising from landlord control allows for a duty of care if the landlord retains possession of an apartment's common areas, such as stairs, halls, elevators, or yard space. The window in question in White was not open to common use, was not subject to the landlord's control, and the landlord's maintenance did not create a duty to enhance the screen to prevent a child from falling.

Finally, the court discussed the landlord's duty with regard to hidden dangers. Although the landlord generally has a duty to warn tenants of hidden dangers, no warning is required for (1) the tenant, if the tenant knows of the dangerous condition or the condition is so open and obvious that the tenant can be expected to have discovered it on her own; or (2) a tenant's guests.

Conclusion. Premises liability is a complicated area of law with many exceptions and subtleties. Please keep in mind that the majority of cases will turn on their specific facts and circumstances. The above discussion is a broad overview solely intended to provide generalized guidance on some of the more significant aspects of landowner liability.

This article is not intended as legal advice but rather to make you aware of the general scope of premises liability. I encourage you to contact an attorney to answer any questions you may have.