FOSTER GRAHAM MILSTEIN CALISHER
ATTORNEYS AT LAW

FGMC Newsletter **Second Quarter 2012**

"Property Manager Duties And The Premises Liability Statute" by Stephen A. Fermelia

Property managers are no strangers to dealing with a variety of laws --from federal laws like the Americans with Disabilities Act and Fair Housing Act and their state-law counterparts, to local building codes and ordinances. Property managers should also be acquainted with premises liability law, which addresses the responsibilities occupiers of property owe to persons coming onto their land.

In Colorado, those responsibilities are generally controlled by the terms of the Colorado Premises Liability Statute, C.R.S. § 13-21-115. The Statute provides the exclusive remedy against "landowners" for conditions existing, or activities conducted, on their land.

Surprisingly, "landowners," as statutorily defined, include not only the titled owner of real property, but also other people or entities who exercise some possession or control over the property. Such possession or control need not be exclusive and, by virtue of their roles, property managers will almost always fall within the "landowner" definition.

Under the Statute, landowners' legal duties to persons on their property vary depending upon whether the person is a trespasser, licensee, or an invitee.

Not surprisingly, a landowner's least onerous duty is to a trespasser --a person who enters or remains on another's land without consent. Usually, the only duty a landowner owes to a trespasser is to refrain from willfully or deliberately injuring him or her.

At the other end of the spectrum is an "invitee," to whom the highest legal duty is owed. An invitee is a person who either enters the land to transact business in which the parties are mutually interested, or who enters or remains on the premises in response to an express or implied invitation from the landowner that the public is welcome. Typically, business customers, tenants of leased property (both residential and corporate), and employees of

commercial tenants are all classified as “invitees,” as are persons employed by property managers to maintain or perform services on the premises.

Landowners owe invitees a duty to exercise reasonable care to protect them against not only dangers that the landowner actually knew about, but also those about which the landowner should reasonably have known. Thus, a landowner can be liable to an invitee where the landowner has no actual knowledge of a danger if, in exercising reasonable care, the landowner should have known of the danger.

Between the extremes of ‘trespasser’ and ‘invitee’ are those persons qualifying as “licensees.” Licensees are persons who, with permission or consent of the owner, enter or remain on the land for their own convenience, or to advance their own interest. The Statute includes “social guests” in the definition of licensee (even though one might ordinarily think of such persons, having been ‘invited’ to the premises, as “invitees”).

Landowners are liable to licensees only for dangers of which the landowner has actual knowledge. Of such dangers, if the landowner created the danger, the landowner must take reasonable steps to protect the licensee. If the landowner knows about a danger which the landowner did not create, but of which is not ordinarily present on the land, the landowner must reasonably warn the licensee of such dangers.

Of course, there are always exceptions and each case must be evaluated based on its unique facts. If you have a question about a particular circumstance or situation, please contact Mr. Fermelia or other competent legal counsel.

Mr. Fermelia is a partner with Foster Graham Milstein & Calisher, LLP, and his practice focuses exclusively on litigation. He has defended dozens of premises liability cases, winning trials before juries in Colorado and Wyoming. This article is provided for information only and does not create an attorney-client relationship between author and reader.