

**PREMISES LIABILITY IN VIRGINIA
A SUMMARY OF THE DUTIES AND RESPONSIBILITIES
OF THE LANDOWNER**

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The issue of whether a landowner may be liable for an injury to someone that occurs on their property depends on the legal classification of the injured person at the time of the injury. There are three types of visitors that are used in the analysis of premises liability: trespasser, licensee, and invitee. The duties and responsibilities of a landowner are vastly different depending on the status of the person injured. This article provides a summary of the landowner's duties as to each of the three types of visitors.

A trespasser is someone that is on the premises without any right or permission from the landowner. Ordinarily the owner owes no duty to a trespasser except a duty not to injure the trespasser intentionally or wantonly. A trespasser generally cannot recover for injury by reason of defects in the premises, excavations or contact with running machinery or the like. That is, trespassers take the risk of the place as they find it. However, there are two exceptions to this rule for trespassers. One exception occurs if the trespass is of such a nature and so frequent as to charge the landowner with notice of the trespass, and the danger likely to ensue to the trespasser. Under those circumstances, the landowner is chargeable with the duty to lookout for such trespasser. The landowner does not owe a duty of foreseeing or preparing for the frequent trespasser. The other exception is known as the "dangerous instrumentality doctrine" which holds that it is negligent for a landowner to leave on their premises, easily accessible to children, an instrument, machine, appliance or material which contains hidden, concealed, or latent danger when handled by one unfamiliar with its use. This doctrine imposes a duty upon the landowner the duty to take proper precautions to prevent trespassing children from using the same. In order for the doctrine to apply, the danger of the instrumentality must not only be hidden or latent, but it must be easily accessible to children and in a location where the landowner knows or should know that children frequently gather. Children up to age 7 are legally incapable of committing acts of negligence in Virginia. There is a presumption that children between the ages of 7 and 14 are legally incapable of committing acts of negligence but this presumption can be rebutted by showing the child did have the capacity to understand the danger. Examples of dangerous instrumentalities include explosives, gasoline, charged electric wires and the like.

A licensee is a person that has permission or consent from the landowner to enter the premises, not for a business purpose carried on by the landowner, but for his or her own convenience or benefit. A social guest, however cordially invited, is also only a licensee. Generally speaking a landowner is only liable to a licensee for injuries caused by active negligence or by willful or wanton conduct. When the injury to the licensee involves the activities of the landowner and not the condition of the premises, the landowner owes the duty to exercise reasonable care to avoid injury to the licensee. When the injury to the licensee is caused by a condition on the land the landowner is subject to liability only if, (a) the landowner knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm and should expect the licensee will not realize the danger, and (b) the landowner fails to use reasonable care to make the condition safe or warn the licensee of the condition, and (c) the

licensee does not know or have reason to know of the risk involved.

Virginia Code § 29.1-509 specifically sets forth the duty of care and limitations of liability for landowners to hunters, fishermen, and sightseers, etc. that are given permission to enter the premises. This statutory duty and limitation of liability for the landowner most closely resembles the duties owed to a licensee. The activities include hunting, fishing, trapping, camping, water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, fox hunting, racing, bicycle riding or collecting, gathering, cutting or removing firewood, and any other recreational use, etc. According to the statute, the landowner has no duty to keep the premises safe, but the statute does not limit the liability of the landowner that might arise by reason of gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The limitations of the landowner's liability set forth in this statute do not apply if the landowner receives a fee for use of the premises or to engage in the specified activities.

A person is an invitee when the landowner has extended an express or implied invitation to the visitor and the visitor enters pursuant to that invitation. An invitation typically will be inferred where the visit is of common interest to the landowner and visitor, the premises is thrown open to the public, and the visitor enters for the reason the premises is open. The landowner owes the invitee the duty of using reasonable care to maintain the premises in a reasonably safe condition and to warn the invitee of any hidden dangers. However, the landowner is not an insurer of the invitee's safety. To hold the landowner liable for a hidden unsafe condition on the premises, it must be shown that the landowner had notice of the unsafe condition or that such condition existed long enough to make it the landowner's duty to have discovered it in the exercise of ordinary care. In addition, the landowner has no duty to warn the invitee of a danger that is obvious, reasonably apparent or as well known to the person injured as it is to the landowner. As a general rule, the landowner is under no duty to protect invitees from the criminal acts of third parties on the premises regardless of whether the criminal act is intentional or reckless. There are two narrow exceptions to this rule; the imminent harm exception and the method of business exception. These exceptions occur where there is a special relationship between the landowner and invitee that has been recognized as a matter of law, such as innkeeper and guest, landlord and tenant, or a special relationship that may arise from the facts of a particular case which creates a duty to warn and/or protect the invitee (a) when the landowner has notice of the specific danger just prior to the assault or (b) when the landowner's method of business attracts or provides a climate for assaultive crimes. The determination of whether the landowner is required to warn and/or protect invitees from the criminal acts of third parties depends on the facts of each case.

Hopefully the information in this article will assist you in protecting yourself and/or your business from a premises liability claim. This article is meant to serve only as a general summary of issues as the analysis of premises liability is very often complex and dependent upon the facts and circumstances involved in each case. Please contact an attorney if you have any questions about premises liability.

******Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**