Premises Liability 101

If Injured on Property – Am I Automatically Entitled to Compensation?

No. The injured person always has to prove that their injuries were caused by the negligence of someone else. Under a general negligence theory – you have to prove that your injuries were caused by the active conduct or negligence of the property owner and that your presence was known to the property owner prior to being injured.

Suing under a premises liability theory is used when the injury is alleged to have been caused by a defect or dangerous condition on the property.

What obligations does a property owner have to keep his/her premises safe?

Whoever is responsible for maintaining the property is responsible for maintaining a reasonably-safe premises and to warn of dangers that are (or should be) known to the owner/occupier and, at the same time, not readily noticeable by the guest through the use of "due care." *Hall v. Holland*, 47 So. 2d 889 (Fla. 1950). If the mere fact that multiple people come in and out of the premises (such as at a supermarket or other retail store open to the public) creates a higher likelihood of dangerous conditions being created by those guests (i.e. spilling drinks, dropping products, etc…) the management must make regular and multiple diligent inspections *Winn Dixie, Inc. v. Marcotte,* 553 So. 2d 213 (Fla. 5th DCA 1989) (noting that the frequency of such diligent inspections + the thoroughness of such diligent inspections depends on the totality of the circumstances, including:

- The type of business and activities on the premises
- The type of premises
- The types and degrees of dangers one would expect on such a premises with such a business (i.e. that are foreseeable)

Alongside these factors, courts will also look at: whether or not the owner/manager/occupier warned guests of the danger (verbally, with signs/barricades); what steps they took to remove the dangerous condition or defect; and whether or not the danger was obvious.

Slipping or Tripping on Foreign Objects that have Fallen on the Floor

Can bring a claim per Florida Statutes 768.0755. The injured must prove that the business had actual or constructive notice of the dangerous condition **and** failed to take corrective action. To meet this

burden, the injured party must prove that the dangerous condition either happened with regularity and therefore foreseeable; or that the condition existed for a long enough period of time that, had the business been acting prudently and with ordinary care, the would have be known of the condition.

Plaintiff's can also bring a common law claim for failing to reasonably maintain their premises in a safe condition. In which case, the open/obvious becomes a matter of comparative negligence. However, for those business establishments who maintain an actual business policy of checking floors and can produce a maintenance log showing compliance with that policy (near the area where plaintiff fell) will be able to use that as strong evidence of no liability. *Gerard v. Eckerd Corp.*, 895 So. 2d 436 (Fla. 4th DCA 2005).

Uneven Floors / Steps

However, uneven floors or steps in homes or yards have been ruled on as "obvious conditions" that are not, by themselves, inherently dangerous and do not require warnings by the property owner. *Williams v. Madden*, 588 So. 2d 41 (Fla. 1st DCA 1991) applied this principal to a hotel stating that, unless the hotel management knew of other people falling due to an uneven surface, they had no duty to warn.

Even in a dimly lit and crowded house, the homeowner in *Casby v. Flint*, 520 So. 2d 281 (Fla. 1988) had no duty to warn of an uneven floor.

Exceptions to this general rule occur if the construction or design created a hidden danger. In *Kupperman v. Levine*, 462 So. 2d 90 (Fla. 4th DCA 1985) the unique interior decorating created an optical illusion of a level floor.

So if the dangerous condition is obvious – does that eliminate liability for the property owner/manager?

Not necessarily. Florida is a comparative-negligence state, which means that liability can be apportioned (some % the fault can be placed on the injured party for failing to recognize the obvious defect). But the owner will not be held liable for dangers that would normally be obvious to regular people unless the owner should have anticipated harm despite the obviously-dangerous condition. *Moultrie v. Consolidated Stores Int'l* 764 So. 2d 637 (Fla. 1st DCA 2000). In *Mountrie,* the plaintiff tripped over a ½ foot tall wood pallet left in an aisle. Is that open and obvious? Or should the store anticipate that their customers are distracted by the merchandise on shelves and less likely to pay close attention to the floor?

In *Weir v. Krystal Co.*, 612 So. 2d 665 (Fla. 1st DCA 1993) the first DCA determined that potholes in the restaurant's parking lot were, in fact, open and obvious. But they were located close to the curb near the entrance so there was a genuine question as to whether the business owner should have anticipated that their patron's attention might have been distracted while leaving the store, avoiding traffic, which would prevent them from readily observing the condition of the parking lot.

Do I sue the owner of the property (landlord) or the lessee (tenant)?

It depends. An owner of leased property can be held liable if the property owner maintains some degree of control over the property. In *Haines v. Dania Corner, Inc.*, 920 So. 2d 1289 (Fla. 4th DCA 2006) the court ruled that the owner had no liability in an indoor premises liability action when it was discovered that the owner maintained no right to enter the premises, had no responsibility for maintaining the interior, had no control over the premises, and when it was shown that the tenant knew of the uneven condition that caused the injured party's fall.

Compare this to *Wimbush v. Gaddis*, 713 So. 2d 1107 (Fla. 4th DCA 1998) where the landlord/owner was held at least partially liable when the injured party was injured on a ramp from the leased premises to the parking lot where the lot was not built to code and the language of the lease made the property owner responsible for repairs to the parking lot and the landlord had the right to enter the premises with reasonable notice.

What is the Injured Person's Status on the Property Where He/She Was Injured?

This is a very important distinction, because property owners owe a different (stronger) duty to those they invite onto their property compared to their responsibility owed to licensees and trespassers.

An invitee enters someone else's property with express or implied invitation - e.g. Joe invites you into his house (express) or you enter Walmart (it is implied that they invite everyone onto their premises, you don't need a specific invitation).

Premises owners owe invitees a duty to maintain their premises in a reasonably-safe condition and to warn of dangers that the owner knows (or should know) about. However, a property owner only owes an undiscovered trespasser an obligation to refrain from willfully injuring them.

In between invitee (highest duty of safety) and trespeasser (lowest duty of safety) is the licensee – when a person is not invited onto a premises (expressly or impliedly) but their presence is also not forbidden, they are a licensee. The person is there for their own convenience only.

- E.g. In *Iber v. RPA Int'l Corp*., 585 So. 2d 367 (Fla 3d DCA 1991), the injured party had tripped an fallen on the premises of an office building where he/she intended to call a cab. The building was obviously open to anyone who had business to conduct there, but the plaintiff only went there to call a cab, not to visit one of the tenant. There was no public telephone that might infer that any member of the public could come and use. The injured party did not enter the premises for the intended purpose for which the premises were held open, so the injured party was determined to be a licensee.

Can the Owner of a Premises Be Held Responsible for Injuries that Occur Just Outside of the Premises?

Yes. If a condition on the property creates some danger off the property. For example, if a tree on a piece of property grows in such a way as to block a stop sign or otherwise cause an accident, the property owner may be held liable. *Sullivan v. Silver Palm Properties*, 558 So. 2d 409 (Fla. 1990). The question of whether natural growth becomes a liability to the property owns (such as a growing tree or subterranean roots) is whether the danger is reasonably foreseeable by the person in control of the property. *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)(in this case the owner of a gas station could be held liable when a car, exiting the station, hit a pedestrian because of hedges on the property that blocked the driver's view of the sidewalk) . A growing shrub is readily observable while subterranean growth (such as a root causing someone to fall) is not observable for a long time. *See Sullivan* case.

Sometimes, local ordinances require business owners to maintain sidewalks adjacent to their property. Other times, business owners have no right to touch the sidewalk, rather that is the responsibility of the applicable county or municipality. *Schupbach v. City of Sarasota*, 765 So. 2d 131 (Fla. 2d DCA 2000); and *Sullivan v. Silver Palm Properties*.

Florida courts have also held property owners liable for failing to maintain walkways, driveways, and parking lots that they actively encourage customers to utilize. *Shields v. Florida Fair Stores*, 106 So. 2d 90 (Fla 3d DCA 1958); *IRE Florida Income Partners v. Scott*, 381 So. 2d 1114 (Fla. 1st DCA 1979).

<u>Landscaping</u>

Injuries on landscaping and grassy areas generally make for bad personal-injury cases. A property owner does not owe a duty people injured while traversing landscaping/grassy area when there is a paved pathway or designated walking area nearby. This applies even if there are walking hazards not readily observable – for the injured party assumes the risk by avoiding the designated walkway. *Dampier v. Morgan Tire & Auto, LLC*, 82 So. 3d 204 (Fla. 5th DCA 2012); and *Wolf v. Sam's E, Inc.,* 132 So. 3d 305 (Fla. 4th DCA 2014)(this general rule applied even when the tree roots which caused fall/injury were hidden because the plaintiff could have used a nearby path designated for ingress and egress rather than taking a short cut).

In *Taylor v. Universal City Property Mgmt*., 779 So. 2d 621 (Fla. 5th DCA 2001) property owner was not liable for injuries sustained when plaintiff stepped onto a planter edge and fell. The court deemed planters "open and obvious."

The Personal Injury Law Firm of Neufeld, Kleinberg & Pinkiert, PA is here to help you though your slip and fall injury, trip and fall injury, or any other premises-liability case. Reach us 24/7 at (305) 931-6666 | (954) 523-8292 | (800) 379-TEAM or find us at www.neufeldlawfirm.com.