

# LEGAL NEWS FROM DOHERTY & PROGAR



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## PREMISES LIABILITY IN INDIANA

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Lawsuits against Indiana commercial property owners for slip and falls or trip and falls are extremely common. These types of accidents can occur in a variety of alleged conditions

A knowledge of the applicable law will be of benefit to our commercial clients to avoid or limit potential future litigation stemming from claims of property owner negligence in maintaining the condition of their properties. Doherty & Progar can assist the commercial landowner in navigating the dangerous waters flowing in this area of the law.

The analysis of an owner's potential liability for injuries resulting from injuries occurring on the owner's property is determined by the status of the person entering the land. A person entering the property of another is designated either as a trespasser, licensee, invitee or social guest.

A trespasser enters another's land without the landowner's permission. The only duty owed by the landowner to the trespasser is to refrain from willfully or wantonly injuring him after discovering the trespasser's presence.

A licensee is one who enters the premises of another for his own convenience, curiosity, or entertainment. The licensee takes the land as he finds it. As such, the landowner is not liable for any defects in the condition of the land and does not have a duty to maintain his premises in a safe condition. However, the landowner does owe an affirmative duty to the licensee to avoid willfully or wantonly injuring him or acting in a manner which would increase the licensee's peril.

An Indiana landowner owes the highest duty of care to the invitee. The invitee and the social guest are the most common type of entrants to commercial property. An invitee is a person who enters the land of another at the express or implied invitation of the owner either to transact business or for the mutual benefit of the invitee or the owner or occupant. The invitee is owed the highest duty of care by the landowner, the duty to exercise reasonable care for the invitee's protection while the invitee is on the landowner's property.

Invitees can be divided into two classes, i.e., the public invitee or the business visitor. A public invitee is one who is invited onto the property for a purpose for which the land is held open to the public.

A business visitor is one who is either invited to the property or is allowed to remain on the property for a purpose either directly or indirectly connected with the business purpose of the land. Social guests, who are basically invitees of invitees, are accorded the same duty of care as invitees.

However, the landowner has defenses to a premises liability claim even against invitees to the property. A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he: (a) knows or by the exercise of reasonable care would discover the condition and should realize that it involves an unreasonable risk of harm to such invitees; (b) should expect that they would not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect them against the danger.

A landowner is generally not liable for injuries resulting from known or obvious dangers on the land. However, a condition of the land must be known to the plaintiff. This requires the plaintiff to both be aware of the condition and appreciate its dangers.

Most persons who enter a commercial landowner's property are viewed as invitees or social guests. Therefore, the landowner would be well advised to have in place a written plan of action in the event of inclement weather such as snow and/or ice. This plan should include a written protocol requiring the landowner's personnel to actively monitor the condition of the property and then take reasonable action to see that the property is kept in a safe condition.

The duty of the property owner is that of reasonableness. Therefore, if reasonable care can be shown in maintaining the property the defense of such a case would be greatly advanced. Inspections of other conditions existing on the property such as loose railings, holes in the ground or conditions of sidewalks should similarly be conducted to reduce potential claims.

Doherty & Progar has significant experience in the defense of premises liability cases. We can assist you in states of Indiana, Illinois, and Wisconsin if an individual claims injury resulting from an alleged condition of your property.

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