

# When All Is Not Quiet on the Home Front

## IN SECTION: SPECIAL ADVERTISING SUPPLEMENT PERSONAL INJURY

The consequences when someone is injured at your home, or vice-versa

BY TREVOR KUPFER

Several years ago, an elderly woman who was staying at her daughter's house slipped on the floor, which her daughter had mopped, and broke her hip. So she did what one does in such situations: She sued.

"Sometimes it's a little uncomfortable—I would say it's a lot uncomfortable—because you don't want to sue your child, your parent or your friend," says personal injury attorney Cheryl Eisberg Moin, at Hill & Moin, who represented the elderly woman in the lawsuit. "But that's why people get insurance."

Whether someone slips on an icy sidewalk, trips over an item atop basement stairs, or tumbles onto debris, an injury on private property falls under premises liability. The injured party should seek medical assistance, then consult a personal injury attorney. They may be able to collect for medical costs, plus damages like lost earnings and pain and suffering. Meanwhile, as soon as they know about the accident, the property owners should notify their insurance company.

"Evidence collection should be done early by the homeowner in order to protect themselves," says Sharon A. Scanlan, a plaintiff's attorney at Jacoby & Meyers. "After the lawsuit is started, oftentimes, the insurance company assigns an outside attorney to represent the homeowner."

Now that cameras are more common outside properties, Scanlan recommends preserving footage. Premises cases are often not witnessed. "For a homeowner or a plaintiff, those tapes can be crucial," she says.

"The standard in New York is that it has to be a reasonably safe condition," Scanlan continues. "One of the misconceptions is if you fall on ice—say, coming out of a friend's home—that the homeowner is automatically responsible. That's not necessarily the case. The law allows a reasonable amount of time after a storm for a homeowner to take care of a dangerous condition. With weather, there is the 'storm in progress' defense that says, if it's snowing or sleeting out and someone falls on your property, you're generally not responsible because it's not reasonable to expect someone to treat precipitation while it's occurring."

So how much time do you have? "There's no specific time set by the legislature or courts," says Scanlan. "They look at the totality of the circumstances. If it's a foot of snow, that takes time for a homeowner to clear. But if it's a commercial building with a parking lot, they'd have less time to treat that condition because they know employees and shoppers are coming. What's reasonable is on a case-by-case basis.

"For defective conditions—say, a raised or uneven sidewalk—there are two ways a premises owner can be held responsible. One example is if they created the condition—like they repaved and didn't do a good job, or they have a drain that causes water to go over the pathway and it freezes. Another example is a condition that exists for a long enough time that a reasonable property owner should have known about it."

This standard also applies to who is involved. "Somebody who's coming in to rob you is looked at differently from neighbor kids coming over to play in your pool," Moin says. "If you have an invited guest or somebody you expect to come to your house, the standard's going to be a lot higher. You know that a postal worker comes and delivers mail."

It all starts with insurance. It's a good idea for a homeowner to have an excess/umbrella liability policy, Scanlan says, because in New York, "an injured party is not limited in recovery to only available insurance. Sometimes the property owner's personal assets can be exposed on an excess verdict."

Read carefully; each policy is different. Report an accident in a timely manner, Scanlan adds, to allow the insurance company the opportunity to investigate the claim. Otherwise, it could deny coverage.

"In New York, most plaintiff personal injury attorneys work on a contingency fee," Scanlan says. "Therefore, an injured plaintiff should seek a no-cost opinion in order to protect their rights on a potential claim."



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