

Occupiers' Liability – Slip and Fall

Definitions

Occupier - A person, company or other entity that owns the premises, has possession of it or has responsibility and control over it. All parties that have an interest in a property, such as landlords, property owner and tenants, can be considered an occupier in certain circumstances.

Occupiers' Liability - Persons using the premises must be kept reasonably safe from harm or the occupier may be held legally liable for their injuries.

As an occupier, you and/or your organization are required to keep areas such as aisles, stairs, ramps, walkways, driveways and parking lots reasonably safe for persons who are using them. Some common hazardous conditions include:

- ice and snow that has not been cleared
- unexpected elevation changes
- uneven surfaces (e.g., cracks, gaps, potholes)
- slippery surfaces (e.g., wet floors, tile flooring)
- missing or loose handrails on stairs
- debris on walking paths (e.g., boxes in aisles)
- inadequate lighting.

Legal Liability

An occupier may be held liable for slips, trips and falls if he/she/it fails to provide a reasonable standard of care in keeping the premises free from hazards.

In cases where there is more than one occupier - such as a landlord and a tenant or in the case of shared spaces - it is possible for liability to be shared. Who is held liable depends on the circumstances of the loss.

The following are some of the criteria used to determine whether or not the appropriate standard of care was applied:

- Whether the danger was foreseeable.
- Whether the occupier's conduct was in accordance with acceptable standards of practice.
- Whether there was an adequate system of inspection (considering the risks involved) in place and carried out.
- Whether the danger was allowed to exist for an unreasonable amount of time.

Key Point

Slips, trips and falls result in some of the most common and costly liability claims for many types of organization.

Key Point

Keeping your premises safe and free from hazards by carefully inspecting and maintaining them is one of the best ways to prevent losses.

Occupiers' Liability – Slip and Fall



- The ease with which the danger could have been prevented.

The best way to avoid liability is to prevent losses from occurring by diligently keeping premises free from hazards. This diligence, in combination with thorough and consistent documentation, will be one of the most effective ways to defend your organization against a claim or lawsuit should one occur.

In the case of shared spaces or multiple occupiers such as a landlord and tenant, ensure that the lease agreement clearly states the responsibilities of each party. The agreement should state the areas each is responsible for, who is responsible for inspection, maintenance, repairs, etc., and the liabilities of each.

Risk Management

1. Develop and implement an Inspection and Maintenance Policy (sample below) that states:

- the purpose of the policy;
- effective and revision dates of the policy;
- how often it is to be carried out;
- how it will be documented and by whom;
- corrective actions to be taken if minimum standards are not met; and
- who is responsible.

Key Point

An Inspection and Maintenance Policy that is written, consistently used, documented and strictly enforced is essential.

2. Use a regular and reasonable cleaning and maintenance program.
3. Perform inspections frequently for hazards or maintenance deficiencies. For example, spills and water at entrances are common causes of slips, so regularly inspect for wet floors in high-risk areas such as entrances, bathrooms, and beverage-service areas.
4. Create a form to be used during inspections (sample below).
5. Train employees/volunteers to identify and fix hazards.
6. When hazards are discovered, address them using methods such as:
 - posting signs or notices in highly visible locations to warn patrons of potential danger;
 - erecting barriers to prevent access to hazards;
 - conducting repairs; and/or
 - removing the hazard.

Occupiers' Liability – Slip and Fall



7. Ensure all areas are adequately lit.
8. Use a non-slip floor treatment (especially when wet or greasy floors are inevitable).
9. DOCUMENT!! Keep records of inspections, repairs and the state of the premises.

Indoors	Outdoors
<ul style="list-style-type: none"> • Keep floors free of hazards and debris. • Keep entrances clean (as much as possible). • Place mats over wet areas (especially in wet weather). 	<ul style="list-style-type: none"> • Salt, shovel and sand icy or snowy areas. • Follow bylaws and/or best practices that dictate when snow clearing should be completed.

Claims Handling

1. Assist the injured person in finding medical treatment. For example, call an ambulance if necessary
2. Record the names and contact information of any witnesses. Obtain and record detailed descriptions of the incident from the victim and witnesses.
3. Refer any discussions with the claimant to your insurer. It is wise to tell employees and/or volunteers that they should not discuss liability with potential claimants and that they should NEVER ADMIT LIABILITY!!!
4. Instruct employees and volunteers to never admit fault on behalf of the organization. They should say "I'm not permitted by my employer to discuss the circumstances of the incident. I will, however, be reporting the incident immediately, and an authorized person will contact you."
5. Take pictures of the area where the incident occurred. If possible, photograph the footwear that the claimant was wearing.
6. Complete an incident report (sample below). Documenting the incident may help to establish a defense for a claim presented at a later date, help analyze the cause of the incident and help recommend risk management improvements to prevent similar incidents in the future.
7. Report the incident to your insurer. Provide them with:
 - details of the incident; and

Key Point
The way in which accidents and incidents are handled can have a significant impact on the ultimate cost of claims.

Occupiers' Liability – Slip and Fall



- information about steps that had been taken to avoid the incident.
8. Investigate potential causes and take steps to prevent and/or respond better to similar incidents in the future.

Additional Resources

The provinces listed below have occupiers' liability legislation. Click on the adjacent link to view that province's legislation. The other common-law provinces interpret the law of occupiers' liability based on legal precedent and the laws of negligence, while in Quebec it is codified in the Civil Code.

Alberta <http://canlii.org/ab/laws/sta/o-4/20050510/whole.html>

British Columbia http://www.qp.gov.bc.ca/statreg/stat/O/96337_01.htm

Manitoba <http://canlii.org/mb/laws/sta/o-8/20050510/whole.html>

Nova Scotia <http://canlii.org/ns/laws/sta/1996c.27/20050511/whole.html>

Ontario http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90o02_e.htm

Prince Edward Island <http://canlii.org/pe/laws/sta/o-2/20050419/whole.html>

Occupiers' Liability – Slip and Fall



Sample Inspection and Maintenance Policy

Inception Date: _____
Revision Dates: _____
Approved By: _____

Purpose

To ensure a safe, clean and hazard-free environment for customers and employees through a process of regular inspection and maintenance of all buildings and premises.

Policy Details

- Inspections shall be carried out once every hour during hours of operation, of all buildings and premises in the specific locations as set out on the attached Inspection Form.
- Inspections shall be carried out by the maintenance person on duty.
- Inspection forms shall be completed in full for EVERY inspection.
- Completed inspection forms are to be filed with the manager of buildings and property with a copy to be filed with the manager of administration. (Retention period should be determined with the advice of legal counsel.)
- Any deficiencies or hazards must be noted.
- Any deficiencies or hazards must be acted upon immediately to remove the hazard, warn of it, or close off the area in question.
- Any action taken to correct or protect against deficiencies or hazards must be noted.

Responsibilities

The manager of buildings and property shall be responsible for the implementation of this policy.

Occupiers' Liability – Slip and Fall



Sample Inspection Form

Date _____ Building _____

Location	Time	Good Condition (Y/N) *	Action taken (if any)	Inspected by Initials**
Bathroom				
Kitchen				
Front Entrance				
Side Entrance				
Back Exit				
Hallways				
Room A				
Room B				
Room C				
Room D				
Basement				
Parking Lot				
Exterior Sidewalks				
Grounds				

* if no, action must be taken immediately and documented.

** Initials must be identifiable and unique.

Occupiers' Liability – Slip and Fall

Sample Slip and Fall Incident Report



Date of incident: _____ Date reported: _____
Time of incident: _____ Time reported: _____
Location: _____
Reported by: Name: _____
Position: _____
Phone Number(s): _____

Bodily Injury:

Name of injured person: _____
Phone number: _____
Description of Injury: _____

Incident Description: (use reverse for more detail)

Witnesses:

Name: _____ Name: _____
Address: _____ Address: _____
Phone: _____ Phone: _____

Additional Details:

Type of footwear worn: _____
Weather conditions at the time of incident: _____
Direction of movement and intent of injured person: _____

Incident Prevention:

Was the incident preventable? Yes No
Suggested corrective action:

Attachments:

Attach any photographs of the site where the incident occurred.

Name of photographer: _____
Date photographs taken: _____
Phone number(s): _____

Signature: _____