

# **Premises Liability 101:** A Practical Guide to Recovering Full Compensation

A HAAS & CASTILLO EBOOK

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## The Basics

**Premises liability is the branch of personal injury law dealing with injuries or death caused by the fault of a property owner or one who manages or controls the property.** In this short guide we'll review the basics of how premises liability cases are analyzed, including the typical claims made and most common defenses. You'll learn that one's status on the premises is pivotal to determining the duties owed and available defenses. We'll look at the steps that must be taken to pursue a premises liability case. We'll look at several specific premises liability factual scenarios with case studies showing how we handled those situations. Finally, we'll give you some tips about preserving evidence if you have been injured due to the fault of a property owner or manager.

### Status On The Premises

A person injured on the property of another is either an adult trespasser, a child trespasser to whom the attractive nuisance doctrine applies, a licensee, or an invitee. Trespassers come onto the property of another without permission and often despite warnings. Some child trespassers fall within a special class of protected plaintiffs who are injured or killed by being drawn onto the property by an "attractive nuisance": a unique property feature that the owner knew or should have known would entice a child. A licensee is one neither invited nor prohibited from stepping onto the premises. Defendant property owners owe only limited duties to adult trespassers and licensees. Invitees are persons invited onto the premises either by actual invitation or by implication (e.g., social guests at a residence or customers or clients at a place of business). Most plaintiffs bringing a premises liability case are invitees.

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### Duties Owed

Property owners owe invitees two duties: the duty to maintain the premises and the duty to warn of known hazards. These duties are independent of each other. Sometimes, defendants will argue that a case should be dismissed because warnings were given. Courts often reject these arguments if the property owner failed to sufficiently maintain the property despite the warning.

### Typical Defenses

A property owner defending against the claim of an injured invitee has two primary defenses. First, he can claim that the hazard was "open and obvious": that the injured plaintiff should have

noticed it and taken measures to avoid it. If well stated, the “open and obvious” defense is a complete defense (i.e., it can completely defeat the case). The second typical defense is “comparative negligence.” In a comparative negligence state like Florida, the jury must determine whether the plaintiff contributed to the accident and, if so, the percentage of the plaintiff’s fault. Comparative negligence is a fall back defense available to the property owner even if the hazard was not “open and obvious.”

The fate of a premises liability case, to a large extent, is in the injured party’s hands. The injured party and her attorney must act quickly. Evidence can go stale or be destroyed. Think,

for instance, of a surveillance tape at a store showing how a slip and fall occurred. Businesses routinely erase these tapes, so an injured party and his attorney must demand that evidence be preserved. Think also about medical care. If an injured party fails to get follow up treatment after an accident, many jurors will think there was nothing wrong with her. Plaintiffs must be diligent to document how the injuries suffered on the premises changed their lives.

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## Common Types of Premises Liability Cases

The scope of premises liability cases is best understood by illustration.

The following are some of the more common types of cases...

### Fall Downs

Slip and falls and trip and falls are the most common of all premises liability cases. These injuries can be caused by slippery substances, poorly lit passageways, hazardous stairs or ramps as well as a variety of other hazards. These cases require proof that the property owner knew or should have known that there was a hazard that could cause a fall. Remember the twin duties to maintain the premises and warn about hazards owed to invitees.

#### CASE STUDY

**Our Firm represented a bar patron who fell from a raised platform where chairs and tables were located. Investigation revealed that the platform violated the building code and was concealed from local officials. We moved for a court order to allow us to pursue punitive damages. After the judge granted our motion, the case settled on confidential terms.**

## Drownings

The same duties owed to invitees apply in drowning cases. Warnings may be necessary to avoid injuries from hidden natural objects. Pool drownings are a common theme in attractive nuisance cases involving children. Whatever the setting, expert testimony drilling down on the duties owed may be necessary.

### CASE STUDY

**We were retained following the drowning death of a young boy at a state park. After our investigation revealed that the boy's tragic death could have been prevented by signs warning about strong currents nearby, we filed suit against the state. The case later became a landmark Florida premises liability decision: *Andrews vs. Department of Natural Resources*.**

## Construction and Design Defect Accidents

Often, injuries are caused by negligence in the design or construction of a structure. Experienced practitioners know that a set of rules govern whether an architect, a contractor or the owner (or all of them) should be liable if the structure fails.

### OUR EXPERIENCE

**Firm member Lee Haas, a Florida Bar board certified business litigator, has extensive experience handling construction defect cases both on behalf of owners and construction trades. Firm member Marcus Castillo also has considerable construction litigation experience including a lead role in several federal construction product liability cases.**

## Criminal Assaults

Liability for hazards on property extends beyond hazardous physical objects to dangerous persons if the landowner knew or should have known about their potential presence and ability to do harm. Landowners and management companies may be liable for negligent failure to provide security, sufficient lighting, or to take other measures to ensure the safety of patrons. These cases frequently require expert testimony to establish liability.

### CASE EXAMPLES

**Firm member Marcus Castillo has handled negligent security and criminal attack cases involving assaults at...**

Restaurant parking lots	Shopping centers
Condominium units	Taverns
Apartments	

## Steps to Take if You Have Been Injured on Someone Else's Property

If you have been injured on someone else's property and are considering making a claim for damages, take the following initial steps to preserve your case:

- List the names of any witnesses with contact information and a summary of what they know
- Gather photographs and videos of the scene.
- In a slip and fall or trip and fall case: find and keep the shoes worn on the day of the fall.
- In a construction accident case: gather copies of the construction contract, building designs and specifications, any inspector reports and field notes.
- In a public or private park case: gather proof of admission (e.g., receipt or ticket).
- Gather medical records including hospital visits, medical testing and medical billing
- Gather lost wage information.

This is not an exhaustive list. Consider retaining an attorney specializing in premises liability law as soon as possible. We can help you preserve vital evidence necessary to bring your claim.

## Afterword

We hope you've found this eBook to be a helpful introduction to premises liability law. This is not a do-it-yourself endeavor. Gather the evidence but make sure to contact an experienced attorney who can help you preserve evidence and protect your rights.

### ABOUT THE AUTHOR



### Marcus Castillo, B.C.S.

Marcus is an AV-rated Florida SuperLawyer (Top 5% of all lawyers in the state) with substantial experience handling premises liability cases. His practice areas include:

**AD&D and Life Insurance Claims**  
**Criminal Attacks and Sexual Abuse**  
**Employment Litigation**  
**Premises Liability**  
**Whistleblower Claims**



Marcus is also co-founder of **TrialFocus, LLC**, which employs focus groups to test the strengths and weaknesses of civil litigation cases.



## **Haas & Castillo, PLLC is a law firm built on reputation and referrals, not advertising.**

We are a law firm of specialists certified as experts in business litigation and labor and employment law by The Florida Bar and have worked in Tampa Bay for over 35 years.

Our business and construction litigation practice, led by Lee Haas, includes these types of disputes: contracts, collections, construction, real estate, corporate, trade secrets, noncompetition contracts, and landlord/tenant, as well as appeals of these cases.

Marcus is board-certified in labor and employment law and handles a variety of labor and employment law related matters both for plaintiffs and defendants. Marcus has long achieved successful results for persons injured due to premises liability. These cases include negligent security, fall-down, water hazard and building defect cases. Marcus also handles the related field of civil liability for criminal, attacks and sexual abuse.



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