

Premises Liability at Your Pool Party



Summer is a time for BBQs, pool parties, and... personal injuries? Every year, homeowners are sued by their guests for injuries arising from things like faulty stairs, misplaced rugs, dilapidated porches, holes in yards and a variety of injuries resulting from interactions with pools. Homeowners have a duty to their social guests – legally described as a gratuitous licensee – to not injure them by willful, wanton or gross negligence. Pool-related injuries occurring on private property are even more complex.

WHAT CONSTITUTES A PREMISES LIABILITY?

Premises liability first defines the type of entrant one is to the property. One can be an invitee, licensee or a trespasser. If you visit a public pool, you are an invitee. If you visit a privately-owned pool, you are a licensee. In both scenarios, you should expect a reasonable level of safety from the property-owner. They have a duty to warn of any potentially dangerous situations. It should go without saying that property-owners are not liable to trespassers, though there is one exception I'll explain later.

So, just what constitutes "willful, wanton, or gross negligence"? Courts have answered this question by explaining that a guest injured at someone's home must prove the following: (1) a condition of the premises created an unreasonable risk of harm to the licensee; (2) the owner actually knew of the condition; (3) the licensee did not actually know of the condition; (4) the owner failed to exercise ordinary care to protect the licensee from danger; and (5) the owner's failure was a proximate cause of injury to the licensee.

In plain English, a homeowner is liable to a guest if the homeowner knew of a dangerous property condition, which the guest was unaware of, and the homeowner did not protect the guest from the danger, resulting in the guest suffering an injury. Homeowners can protect their guests in one of two ways: warn the guests of the potentially dangerous condition or make the premises reasonably safe.

As a quick aside, a host is still liable for active negligence that harms a guest. The courts have held that "active negligence" includes injuring guests with fireworks or BB guns. Active negligence is distinct from premises liability, as it is unrelated to the dangerous or defective condition of the premises. A host, therefore, is not liable for ordinary negligence stemming from a dangerous condition on the premises.

KEEP YOUR POOL SAFE

During the summer months, homeowners with swimming pools must be especially careful in keeping their pool areas safe to protect guests from common injuries.

From Memorial Day to Labor Day last year, at least 163 children under the age of 15 drowned in swimming pools or spas nationwide, according to media reports compiled by the USA Swimming Foundation. Of those, nearly 70 percent (112 victims) were children age 5 and younger. For every child who dies from drowning, another five receive emergency care for submersion-related injuries. African-American and Hispanic children between the ages of 5 and 14 drown at higher rates than white children, according to the Centers for Disease Control. The CDC also reports that 70 percent of water-related deaths involve alcohol use.

Though trespassing persons normally are not owed any duties, trespassing children are treated more like social guests due to the what's known as the "attractive nuisance doctrine." For this reason, the state of Texas requires swimming pools in many neighborhoods to be surrounded by fences that include childproof latched gates. Many municipalities have similar ordinances. These laws are primarily intended to prevent children from trespassing and then drowning in these pools.

Outside of drowning, slippery decks are another common issue. Homeowners should be sure to mop up large pools of standing water in the pool area. Choosing a non-slippery material for the area around the swimming pool is also important. Moreover, if you want to paint the pool-side deck, you can actually choose a paint containing an anti-slip additive to keep the deck "slip resistant."

STAY MINDFUL

This summer, host pool parties and have fun, but be mindful of potential liabilities that may arise from dangerous conditions on your property, especially if you have a pool.

AFTER SERVING IN THE U.S. ARMY, CHAD WEST DECIDED TO DEDICATE HIS CIVILIAN CAREER TO PROTECTING THE RIGHTS OF INDIVIDUALS WHO ARE FACING DIFFICULT LEGAL CIRCUMSTANCES. IN THE PAST DECADE, CHAD HAS LED THE CHARGE ON COUNTLESS HIGH STAKES LITIGATION CASES RANGING FROM COMPLEX PLAINTIFF'S LITIGATION SUITS GENERATING OVER \$200 MILLION IN VERDICTS, JUDGMENTS AND SETTLEMENTS TO FEDERAL AND STATE CRIMINAL CASES THROUGHOUT TEXAS. CHAD'S PRACTICE FOCUSES ON BUSINESS LITIGATION, PERSONAL INJURY AND CRIMINAL DEFENSE. HE WAS SELECTED IN 2014, 2015 AND 2016 AS A D MAGAZINE BEST LAWYER AND IS A 2011-2016 RISING STAR BY TEXAS MONTHLY. FOR MORE INFORMATION, VISIT WWW.CHADWEST-LAW.COM OR CALL (214)-509-7555.