

COLORADO PREMISES LIABILITY ACT: DUTIES & LIABILITIES

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What is Premises Liability?

Colorado's Premises Liability Act is found under C.R.S. § 13-21-115. This Act provides the sole remedy for those injured on land possessed by another landowner.ⁱ The term "landowner" includes authorized agents or other persons in possession of real property or otherwise legally responsible for the condition of real property or the activities conducted or circumstances existing on real property.ⁱⁱ The Premises Liability Act divides a landowner's duty of care by the classification of the injured person.ⁱⁱⁱ These include "invitees," "licensees," and "trespassers."

A 'licensee' is "a person who enters or remains on the land of another for the licensee's own convenience or to advance his own interests, pursuant to the landowner's permission or consent."^{iv} Examples of licensees are social guests^v and those using property for recreational purposes with the consent of the landowner.^{vi} The classification of a licensee can easily be changed should the purpose of the licensee's presence change. For example, a social guest who returns to the property uninvited will his or her classification changed from licensee to trespasser.^{vii} Similarly, a customer of a business who remains on the property after business hours would likely be considered a licensee (or even a trespasser, depending on the circumstances).^{viii}

When Can a Landowner Be Found Liable to a Licensee?

Under the Premises Liability Act, a licensee may only recover damages under two circumstances: (1) the landowner's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner of which the landowner actually knew; or (2) by the landowner's unreasonable failure to warn of dangers not created by the landowner which are not ordinarily present on property of the type involved and of which the landowner actually knew.^x The most significant factor favoring landowners over licensees is the actual knowledge requirement. The Premises Liability Act requires actual knowledge on the part of the landowner. The Colorado Court of Appeals concluded a landowner must possess an active awareness of the dangerous condition, not just what a reasonable landowner should have known.^x

A good example of the violation of a duty owed to a licensee can be found in *Nelson v. U.S.*^{xi} which is a case involving a member of the public who was using a bike path on property owned by the U.S. Air Force Academy. The U.S. Air Force Academy knew the public used the bike path, which had an entry at the boundary of the property and signs directing bicycle traffic. The public has been using the bike path with the consent of the U.S. Air Force Academy and therefore, could be considered "licensees" under Colorado's Premises Liability Act.^{xii} A sinkhole formed on the bike path and because the U.S. Air Force Academy had knowledge of it, the U.S. Air Force Academy could be found liable to injured licensees for failure to warn of the dangerous sinkhole.^{xiii}



ABOUT THE AUTHOR

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Takeaway

A landowner generally has lesser duties to “licensees” than “invitees.” Often, it is difficult to classify whether a person is one or the other and it can depend on the circumstances. However, courts have provided numerous examples of whether a person is an invitee, licensee, or trespasser. It is important to make this determination early to properly advise clients as to the relevant legal standard for liability.

ⁱ C.R.S. §13-21-115(2).

ⁱⁱ C.R.S. §13-21-115(1).

ⁱⁱⁱ C.R.S. §13-21-115(5).

^{iv} *Warembourg v. Excel Electric, Inc.*, 471 P.3d 1213, 1221 (Colo. App. 2020) (quoting C.R.S. § 13-21-115(5)).

^v *Wilson v. Marchiondo*, 124 P.3d 837, 841 (Colo. App. 2005).

^{vi} *Nelson v. U.S.*, 20 F.Supp.3d 1108, 1137-38 (D. Colo. 2014).

^{vii} *Chapman v. Willey*, 134 P.3d 568, 569 (Colo. App. 2006).

^{viii} *Grizzell v. Hartman Enterprises, Inc.*, 68 P.3d 551, 554 (Colo. App. 2003).

^{ix} C.R.S. § 13-21-115(3)(b); see also *Vigil v. Franklin*, 103 P.3d 322, 326 (Colo. 2004).

^x *Wright v. Vail Run Resort Community Ass’n, Inc.*, 917 P.2d 364, 365 (Colo. App. 1996).

^{xi} *Nelson v. U.S.*, 20 F.Supp.3d 1108 (D. Colo. 2014) (rev’d on other grounds).

^{xii} *Nelson v. U.S.*, 20 F.Supp.3d 1108, 1137-38 (D. Colo. 2014) (rev’d on other grounds).

^{xiii} *Id.* at 1138.

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