

# Premises Liability in Colorado

Legal View

By Jeffrey R. Kelley, Esq.

Colorado has a specific law that governs landowner liability that has evolved over the years. It has some interesting and unique applications not generally known. The Colorado Premises Liability Act (PLA) sets forth criteria to determine if a landowner (or “responsible party”) is liable for injury to a third party. Under the PLA, the duty of the landowner depends upon the status of the injured party: whether a trespasser, a licensee or an invitee. The highest standard of care is owed to an invitee, and the lowest to a trespasser. When an injury is caused while on another person’s property, the status of the injured person and the cause of the injury will need to be determined if there can be a recovery for damages from the landowner.

## What is the Colorado Premises Liability Act All About?

The PLA decides whether a landowner will be liable for a defective condition and it does not require negligence to be proven. In fact, once it is determined that the PLA applies, the injured person cannot not plead or pursue a claim for negligence. Premises liability cases are sometimes also known as “*slip and fall*” cases, but many times apply to unexpected situations. Slip or trip and fall cases are typically understood to be where someone slips on ice or falls due to a defective condition on a property. While it may seem intuitive, one of the biggest issues in premises cases is whether the responsible party is a “landowner.” To be a “landowner” under the PLA, one needs only be responsible for activities conducted on property. In one extreme example, a 2014 decision from the Chafee County District Court held that a Jeep tour operator was a landowner of National Forest roads because he operated there with a permit. As a result, a Jeep rollover was thus made to proceed under the PLA, rather than ordinary negligence law.

In another, unfortunately well-known case, the plaintiffs injured in the Aurora theater mass shooting case pursued claims in both the state and federal court based on the PLA. The plaintiffs alleged that the theater mismanaged the property by failing to have proper security measures in place, such as alarms on the rear access door and adequate security guards on site for the midnight showing of a movie expected to have a large attendance. The jury in the state case found in favor of the theater and the federal case was dismissed.

Under the PLA, the *invitee* status implies that the owner has taken the necessary precautions to ensure the safety of the invitee. In the case of licensees and trespassers, there are no implied precautions for safety to be set in place. But even trespassers may recover damages if injured by a defective condition if the landowners “willfully or deliberately” caused an injury.

## How Do You Prove That a Landowner Knew of a Defective Condition?

I represented a client who was injured when he was pushed off a porch and suffered a life threatening leg injury. It was discovered the handrails and railing were previously removed from the porch. City code required both to be in place based on the height of the porch and number of steps. We produced photos of the residence from a prior real estate sales listing showing the railing and hand rails had previously existed and later were removed. Even though our client was found to be intoxicated, recovery for his injuries was largely successful despite his intoxication causing him to incur some fault in the accident.

It is important to be vigilant to keep a lookout for obvious dangers that could cause injury, but the law places a reasonable burden on landowners to maintain their property to protect persons invited to it. Oftentimes, subtle dangerous conditions are more difficult to detect, but it is worthwhile to be aware of the burdens placed on landowners by the Colorado Premises Liability Act. It is also important to know if one could be considered a “landowner” in a given situation.

Do you have a legal question? Send your inquiry to [jeff@klfpc.com](mailto:jeff@klfpc.com). Appointments are available in both Black Hawk and Denver Offices.

*Note: While every effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.*