



# Insurance and Liability for Riparian Associations and Homeowners

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Mark L. Teicher, Attorney



# Negligence & Child Safety

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## **Definition of Negligence:**

Negligence is the failure to use ordinary care. Ordinary care means the care a reasonably careful person would use. Therefore, negligence means the failure to do something that a reasonably careful person would do, or the doing of something that a reasonably careful person would not do under the circumstances.

## **Standard of Conduct Required for the Safety of a Child:**

The law recognizes that children act upon childish instincts and impulses. If the adult knew or should have known that a child or children were or were likely to be in the vicinity, then the adult is required to exercise greater vigilance and is held to a higher standard than just a reasonably careful person.

# Negligence

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## **Negligence When in Violation of a Statute:**

If an adult violated a statute before or at the time of the injury or damage occurrence, then it is inferred that the adult was negligent.

## **Negligence When in Violation of an Ordinance:**

If an adult is in violation of an ordinance before or at the time of an injury or damage, then the violation is evidence of negligence.

## **Negligence When in Violation of a Rule or Regulation:**

If an adult is in violation of a rule or regulation before or at the time of an injury or damage, then the violation is evidence of negligence.

# More Negligence

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## Negligence When Intoxicated by Alcohol or Drugs:

According to the law, one who voluntarily impairs his or her abilities by drinking or drugs is held to the same standard of care as a person whose abilities have not been impaired by drinking or drugs.

## Gross Negligence:

Gross negligence means conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern of whether an injury or damage will result.

# Wanton Misconduct & Proximate Cause

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## **Wanton Misconduct:**

Wanton misconduct means conduct or a failure to act that shows such indifference to whether harm or damage will result as to be equal to a willingness that harm will result.

## **Proximate Cause:**

Proximate cause means that the negligent conduct must have been a cause of the injury or damage and that the injury or damage must have been of a type that is a natural and probable result of the negligent conduct.

# Definitions of Invitee, Licensee and Trespasser

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An **Invitee** is a person who is invited to enter or remain present on your land, boat, or dock for a commercial purpose.

A **Licensee** is a person invited to enter or remain on your land, boat, or dock for other than a business purpose; often called a social guest.

A **Trespasser** is a person who comes upon your land, boat, or dock without express or implied permission, for his or her own purposes.

# Duties of Care to Invitee, Licensee, and Trespasser are Different:

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## **Duty for an Invitee:**

You have a duty to use ordinary care to protect an invitee from risks of harm from a condition on your land, boat, or dock if the risk of harm is unreasonable or if you know or should have known of the condition and should have realized that it involved an unreasonable risk of harm.

## **Duty for a Licensee:**

You are liable for physical harm to a licensee if you knew or should have known or realized that the condition that injured your licensee involved an unreasonable risk of harm, and that you failed to warn your licensee of the danger and that your licensee did not know of the danger.

# Duties of Care to Invitee, Licensee, and Trespasser are Different:

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## Duty towards a Trespasser:

You have a duty to a trespasser to not act with willful or wanton misconduct that may injure the trespasser, or that you were aware or should have been aware of the trespasser's presence on your land, boat, or dock, but failed to use ordinary care to prevent injury to the trespasser or that you were aware of the trespasser's constant intrusions and that the trespasser's activity involved a risk of death or serious harm - then you have a duty to exercise reasonable care to keep your land, boat, or docks reasonably safe so as not to endanger the trespasser.

# If the Trespasser is a Child:

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If the trespasser to your land, boat, or dock is a child, you have a duty to exercise reasonable care to keep your land, boat, or dock reasonably safe for a child if any of the following are true:

1. The child was injured by an artificial condition, or
2. You knew or had reason to know a child would likely trespass, or
3. You knew or should have known about the dangerous condition and realized or should have realized that it would involve an unreasonable risk of death or serious harm to a child, or...

Continued...

# If the Trespasser is a Child:

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If the trespasser to your land, boat, or dock is a child, you have a duty to exercise reasonable care to keep your land, boat, or dock reasonably safe for a child if any of the following are true:

4. The child trespasser did not discover the condition or realize the risk involved in meddling with it or coming within the area made it dangerous, or
5. The usefulness to you of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the trespassing child, or
6. You failed to exercise reasonable care to eliminate the danger or otherwise protect the trespassing child.

# Non-Delegable Duties:

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As an owner or possessor of your land, boat, or dock whatever level of legal duties you owe you may not delegate to others and you are ultimately legally responsible.

# Association

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Auto-Owners Insurance Company

55010 (5-17)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ASSOCIATION DIRECTORS AND OFFICERS ERRORS AND OMISSIONS COVERAGE**

<https://mymlsa.org/wp-content/uploads/2021/04/Association-Insurance-Policy.pdf>

# Lakeside Living

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Auto-Owners Insurance Company

57749 (6-16)Z

## **LAKESIDE LIVING - ADDITIONAL COVERAGE** Homeowners Policy

<https://mymlsa.org/wp-content/uploads/2021/04/Lakeside-Living-Additional-Coverage.pdf>

# Waterfront Advantage

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PIONEER STATE MUTUAL INSURANCE COMPANY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WATERFRONT ADVANTAGE ENDORSEMENT**

<https://mymlsa.org/wp-content/uploads/2021/04/Waterfront-Advantage-Endorsement.pdf>







Dogs often Excluded  
from Standard  
Homeowners  
Insurance Coverage:

- Pit Bull
- Rottweiler
- Chow Chow
- Akita
- Doberman  
Pinscher
- Mastiff
- Wolff Hybrids
- German  
Shepards







...very pleasant natural setting, and are fed a unique all natural all vegetable diet. In addition, Private Selection hens' diets contain no added hormones, and we never use antibiotics or steroids of any kind!

Once you have tasted our special Private Selection eggs, you may never want to buy any other eggs. We hope and believe you will love the taste and texture of our Private Selection eggs.

Nutritional Facts	
Per Egg	
Total Fat	5g
Total Protein	6g
Total Cholesterol	200mg
Total Sodium	100mg
Total Carbohydrate	0g
Total Fiber	0g
Total Sugar	0g
Total Fat	5g
Total Protein	6g
Total Cholesterol	200mg
Total Sodium	100mg
Total Carbohydrate	0g
Total Fiber	0g
Total Sugar	0g

AMERICAN FARM PRODUCTS  
No. 1-A Egg-Ready variety of Eggs  
Produced in the U.S.A. under U.S. Department of Agriculture Inspection  
Eggs are packed in this carton for your convenience. They are packed in their natural state and are not treated with any preservatives.  
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# Do You Have Questions for Mark?

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