

The Attractive Nuisance Doctrine

Whether you are a property or a condominium unit owner or a neighboring parent who fears an injury, you should be aware that these kinds of situations involve special legal rules:

When the owner or person responsible for a dangerous condition should realize that children are likely to come onto the property the owners and Association has a heightened responsibility to prevent any harm.

Children are not expected to fully realize the danger they may encounter.

If a child can't understand the danger, and the owner fails to reasonably protect that child, the owner association will usually be liable for the child's injuries.

For over a hundred years, the law in this country has placed a special reasonability on people who place objects on their property that may attract and cause harm to children. For example, in 1875, a court found a railroad company liable when children played on a railroad turntable and were injured. The court likened a dangerous object children would want to investigate to "bait that attracts fish".

The judge in that case coined the phrase "**attractive nuisance**" to refer to such objects. Property owners were put on notice that they would be responsible for injuries that resulted from the object's presence. And it doesn't matter that the child comes on the property without permission or not..

This idea is still alive and well in the law today, although some courts don't use the "*attractive nuisance*" term anymore. Many judges now refer to this doctrine as the "Restatement Rule" because it is discussed in a book called the *Restatement* (Second) of Torts at section 339.

What is an Attractive Nuisance?

An attractive nuisance is a potentially harmful object or animal that would be as inviting or interesting to a child that it would lure the child onto the property to investigate. An unenclosed swimming pool, playground equipment, for instance, or a fountain containing goldfish would be attractive nuisance if they attracted a child onto the property and caused harm.

Ordinary objects used every day can attract and injure children. An idling lawnmower, paint sprayer, table saw, even the family auto, motorcycle, and recreational vehicles can greatly interest a neighborhood child. Children are also fascinated by construction equipment, (as well as the construction site itself), gasoline pumps, excavations, wells, tunnels, dumpsters, intriguing paths ladders and stairways. A child view objects in a different way that an adult. While a grownup might see a freshly delivered truckload of sand as a weekend's work ahead, a child could find it the perfect mountain to climb or an irresistible sandbox.

You may be thinking that almost anything on someone's property could cause harm to a small child. Even a stick in the yard can be picked up and poked into an eye. Even a stick in the yard is not so unusual or enticing as to draw children over at their peril.

Not every dangerous condition is, legally, and attractive nuisance. Most natural conciliations, such as a lake or a naturally steep bank, are not considered attractive nuisances. To be liable for injury, an owner must have created or maintained the harmful object. And even a very small child is presumed by the law to understand some dangers, for example, falling from a height or touching fire. The attracted nuisance doctrine arises, when the danger itself or the extent of the danger is hidden to a child.