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Legal Matters®

Consumer Safety
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Who's liable for an injury at an Airbnb?

Airbnb and similar house-sharing services can be a great way for homeowners to earn extra cash and for travelers to enjoy the “comforts of home” while paying less than they would for a hotel. But what happens if someone is injured at an Airbnb-type rental?

Hotel guests generally know that a hotel has a legal duty to keep them safe. When guests slip on poorly maintained stairs, take a fall because a railing has come loose, or are hit on the head by a falling shelf, they can generally sue the hotel – and can assume that the hotel can afford to compensate them for their injury.

But it's not as clear with Airbnb – and the “sharing economy” model is so new that many of the legal issues are still being worked out.

Unfortunately, the fact is that injuries may be much more likely to occur at an Airbnb rental than at a hotel. Unlike a hotel, an Airbnb “host” doesn't typically have a full-time maintenance and housekeeping crew, employ lifeguards and night security staff, undergo regular electrical and fire safety inspections, routinely monitor childproofing issues, and so on.

So what happens if someone is hurt?

You might assume that the person could sue Airbnb itself. But the problem is that Airbnb's “Terms of Service” – which guests have



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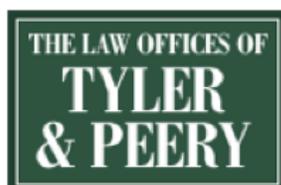
to agree to when they sign up – say that you can't sue Airbnb for an injury. (Most every other home-sharing business has a similar contract.) In theory, it might be possible for a guest to get around this provision, but it could be very difficult.

So more likely, the guest would sue the host for compensation.

In most states, the guest would be considered a “business invitee” of the host. That means that the host must exercise a very great degree of care to keep the guest safe. In other words, an Airbnb host

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An insurance company couldn't avoid its obligations just because an auto accident victim was collecting disability.

Car crash victim gets both insurance and disability payments

A woman who became disabled after a car accident can be compensated for her lost wages under her auto insurance policy, even though she's also receiving Social Security disability benefits, according to a federal judge in Pennsylvania.

Francine Smith became totally disabled after a car crash with another driver. The other driver had a \$100,000 insurance policy, but that wasn't enough to fully compensate Francine for her loss. Fortunately, Francine had an "underinsured motorist" benefit in her own auto insurance policy with Progressive, which kicked in to help cover the difference.

Meanwhile, Francine applied for Social Security disability benefits and began receiving \$1,174 each month.

Progressive claimed that it should be able to deduct the \$1,174 per month from the amount it was paying Francine for lost wages under the policy. It said that Francine was being compensated for that amount twice. And it pointed to a state law that said people shouldn't be allowed to collect double for the same harm.

But the state law was never meant to apply to Social Security disability benefits, the court ruled. Therefore, Francine could collect the full amount.

Of course, the law varies from state to state, and only an attorney can determine the full amount of compensation to which you're entitled in your specific circumstances.

Dangerous products in the news



► **Roundup.** Roundup is a popular weed-killer that's used commercially as well as by homeowners in their backyards. Recently, dozens of lawsuits have been filed by landscapers, farmworkers, road crews and others, claiming the product's active chemical, glyphosate, causes cancer, and that its manufacturer, Monsanto, has known this for decades but done nothing about it.

In one case, a farmer's widow in California claimed that her husband and his dog both died of aggressive forms of lymphoma due to repeated exposure to the product. According to the woman, her husband knew that most pesticides and herbicides were toxic and tried to avoid them – but he didn't take the same precautions with Roundup, because Monsanto had claimed it was safe.



► **Talcum powder.** Johnson & Johnson's Baby Powder and other talcum powder products have been a mainstay of nurseries and medicine cabinets for years. Most people associate them with changing tables and preventing diaper rash.

However, many women also use these products for feminine hygiene purposes. And that's where the risks come in. A jury in St. Louis recently held Johnson & Johnson liable for withholding information from the public suggesting that the use of its talcum powder products for feminine hygiene reasons could cause ovarian cancer.

Some 1,000 women have now filed similar lawsuits against the company.



children falling to the ground.

The U.S. Consumer Product Safety Commission announced the recall after receiving more than 100 complaints, including reports of concussions, lacerations, and a broken finger.

The rings are yellow triangles about 8.5 inches high by 6.5 inches wide. The playsets have an aluminum plate on the wooden swing beam with the name Playgrounds America, Rainbow Play Systems Inc., or Sunray Premium Playgrounds stamped on it.

► **Toy trapeze rings.** Rainbow Play Systems makes popular wooden backyard playsets with plastic trapeze rings. Recently, the company recalled some 130,000 trapeze ring sets because of defects that can cause them to break, sending

Who's liable if someone is injured at an Airbnb?

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would likely be held to a similar legal standard of care as a hotel, department store, or other business.

Many hosts assume that if anything happens, they'll be covered by their homeowner's insurance. But they might be surprised to discover that that's not true. Most homeowner's insurance policies exclude coverage for "business activities" operated out of a home. And presumably, renting your home for a profit is a business activity.

Some homeowner's policies allow you to rent your home once a year, or for a limited number of days per year. But even then, the insurance company might require you to notify it of the rental in advance, or to purchase a separate endorsement.

A host's personal umbrella policy might not cover a business activity either.

If an Airbnb host is a tenant rather than a homeowner, it gets even more complicated. Some tenants have renter's insurance, but renter's insurance generally doesn't cover business activities. An injured guest might be able to sue the landlord, but a landlord might get off the hook if he or she didn't know the tenant was renting the property on Airbnb, or if such rentals were prohibited in the lease. Also, many landlords' insurance policies

exclude coverage for short-term, home-sharing-type sublets.

Recently, Airbnb announced that it would provide hosts with up to \$1 million in liability protection if they get sued by a guest. That's a welcome development, but some other home-sharing companies have not followed suit.



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Many hosts assume that if anything happens, they'll be covered by their homeowner's insurance. But they might be surprised to discover that that's not true.

If you use Airbnb or a similar service when you travel, you might want to confirm that the host is covered by insurance. And if you're injured, you'll want to speak to a lawyer right away about what options you might have for being compensated. If you're a host, you'll want to think carefully about your insurance coverage. A lawyer may be able to help you understand your policies and what additional protections you may need.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Motorist can sue for overgrown trees that blocked view

Joan Gochenour was riding in a car driven by a friend when it crossed a railroad track and was struck by a train. Joan was seriously injured.

She later sued the railroad company. According to Joan, the company had a legal duty to keep trees, bushes and other vegetation near the crossing trimmed in such a way that motorists would have a clear view of whether there was an oncoming train – which the company failed to do in this case.

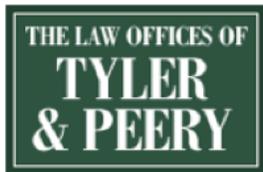
A court in Indiana allowed the lawsuit, and said a jury should decide whether the railroad had properly trimmed the vegetation within 1,500 feet of the crossing.

Overgrown trees are not just a problem at railroad crossings. There have been a number of law-

suits claiming unruly bushes and trees have caused car accidents at intersections by blocking the view of turning traffic, or have made roadways unsafe in other ways, such as by obscuring the visibility of stop signs, speed-limit signs and other warnings and roadway conditions.



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Emergency vehicles still have to be driven carefully

Many states have laws that give special privileges to drivers of emergency vehicles, such as being able to go faster than the speed limit or run stop signs and red lights.

But this doesn't mean that emergency personnel are completely off the hook if they cause an accident. That's because, even when responding to an urgent call, emergency drivers still have to exercise a reasonable amount of care. If they don't, their employer may be liable.

the red light, smashing into Jones's car and causing her serious injuries.

In court, the county argued that Robin should have stopped when the fire truck approached.

But Robin argued that even emergency drivers have an obligation when running red lights to stop momentarily and confirm that the coast is clear. In this case, the emergency driver admitted that another car had blocked his view of Robin's lane, but he had turned anyway. And while the driver had his emergency lights on, his vehicle was a Ford F-250 with lights on the sides of the vehicle, which are less visible than the light bar on top of a typical police car.

A jury weighed the facts and decided that the emergency driver was 60% at fault for the accident, which meant Robin could be compensated for 60% of her damages.

In one recent case, Robin Jones was heading through a green light at an intersection when a county fire rescue truck turned left against

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