



**[7.0] I. OVERVIEW**

Cases involving property are as varied as the circumstances involving human conduct. Indeed, there is seemingly no limit to the scenarios and consequences of flesh coming into contact with matter. At the core of premises liability is the commonly held expectation that property should be free from unduly dangerous conditions. Personal responsibility and reasonable limitations of liability must always be considered, however, when assessing legal blame for an injury. While statutes and case law provide many rules by which a defendant's accountability is judged, the most prevalent, albeit sometimes competing, considerations are actual control and societal responsibility.

**[7.1] II. LEGAL DUTY**

Liability for unsafe conditions on property must be predicated on ownership, occupancy, control, or special use of the premises.<sup>1</sup>

**[7.2] A. Ownership**

The term "owner" is defined in the N.Y. Multiple Dwelling Law (MDL) to "include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling."<sup>2</sup> Whether the status of the so-called owner results in tort liability depends, of course, on the circumstances and ever-evolving case law.

**[7.3] 1. Out-of-Possession Landowner**

Generally, an out-of-possession owner who has no supervision or control over the premises and who has no obligation to maintain or repair cannot be held liable for dangerous conditions on the property.<sup>3</sup> Merely

<sup>1</sup> *Casale v. Brookdale Med. Assocs.*, 43 A.D.3d 418, 841 N.Y.S.2d 126 (2d Dep't 2007); (*James v. Stark*, 183 A.D.2d 873, 584 N.Y.S.2d 137 (2d Dep't 1992); see *Ellers v. Horwitz Family Ltd. P'ship*, 36 A.D.3d 849, 850, 831 N.Y.S.2d 417 (2d Dep't 2007); *Schwalb v. Kulaski*, 29 A.D.3d 563, 814 N.Y.S.2d 696 (2d Dep't 2006); *Welwood v. Ass'n for Children with Down Syndrome*, 248 A.D.2d 707, 670 N.Y.S.2d 556 (2d Dep't 1998)).

<sup>2</sup> MDL § 4(44).

<sup>3</sup> *Cerritos v. Nunez-Reyes*, 12 A.D.3d 394 783 N.Y.S.2d 833 (2d Dep't 2004); *Winby v. Kustas*, 7 A.D.3d 615, 775 N.Y.S.2d 906 (2d Dep't 2004); *Davis v. HSS Props. Corp.*, 1 A.D.3d 153, 767 N.Y.S.2d 72 (1st Dep't 2003); *Putnam v. Stout*, 38 N.Y.2d 607, 381 N.Y.S.2d 848 (1976); (*Worth Distribs. v. Latham*, 59 N.Y.2d 231, 464 N.Y.S.2d 435 (1983); see also *Guzman v. Haven Plaza Hous. Dev. Fund Co.*, 69 N.Y.2d 559, 516 N.Y.S.2d 451 (1987)).