

# **PUBLIC LIABILITY CLAIMS MANUAL**

**for**

**«company»**

Prepared by  
ACE Risk Management Services

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## **INTRODUCTION**

This manual has been written to advise and to guide managers and employees in a complex legal area of common law known as public liability. The foremost aspect of public liability is prevention. If there is no injury or loss, then there is no claim.

There are many things which can be done to prevent losses and injuries from occurring. These are known as accident prevention techniques or in a broader sense they could be described as risk management procedures or initiatives.

Prevention of injury will always be the most cost effective method of managing public liability. Within this prevention activity each employee must be made aware of their equal responsibility to participate and to ensure that local procedures and rules are followed in order to prevent liability occurrences.

Participation by executive staff, operational managers and all other personnel who may have contact with the public is vital to the success of the program.

The objectives of our Public Liability Program are:

To provide a safe environment for all occupiers, visitors, clients, customers and guests.

To provide training on policies, systems and procedures to all employees so they are able to recognise and understand the risks associated within their industry.

To ensure all employees comply with these public liability policies, systems and procedures and take appropriate action when they identify non-complying instances.

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## **1. WHAT IS PUBLIC LIABILITY**

Public Liability is part of the law of torts which focuses on civil wrongs. Applicants (the injured party) usually sues the respondent (the owner or occupier) under common law based on negligence and/or damages. Claims are usually successful when it can be shown that the owner/occupier was responsible for an injury therefore they breached their duty of care.

The duty of care is very complex but in basic terms it is the standard by which one would be expected to be treated whilst they are in the care of another. An example of this is you are travelling by train, and the train derails because the wheel breaks. If you suffer an injury because of the de-railment of the train, and it can be shown poor maintenance caused the wheel to break, the owners will have breached their duty of care.

Once a breach of duty of care has been established an action brought against you in a common law court would most likely be successful. Based on the injuries and the losses of the applicant the court would award a financial compensation package.

In America, although the law is a little different many actions are brought against businesses for negligence. Sometimes these are very expensive and many businesses are forced to close as a result of this type of legal action. America is by far the most vicious country in the world for costly litigation.

In Asia the law has not developed to the same extent although the law does recognise negligence. Most professional are predicting this development to occur rapidly and within the next 10 years

In Australia the general public have become more conscious of their legal rights. In recent times businesses have been faced with more actions under common law this could be attributed to the press reporting cases where the settlements have been very high.

Other reasons why there has been an increase in claims could be due to the fallout from some states Workers Compensation freezes where limits have been put on claims for workers compensation making public liability a more financially attractive option. Whilst there is no avenue for anyone of your employees to claim against your public liability policy the following example shows how an employee from another business can be presented with an option to claim one or the other.

In the past an employee in another business may decide to buy their lunch in a shopping centre. If that employee slipped over and broke a leg in your business they may be able to claim on their employers' workers compensation policy or your public liability insurance. As common law settlements are much higher than workers compensation pay outs there is a certain amount of attraction towards a claim against your public liability.

Another reason for increases in claims could be due to solicitors becoming more approachable to the public. Many solicitors now offer their first consultation for free. More recently some solicitors assess cases, and if there is a high probability of winning the case they may offer no win, no pay.

### **1.1 The Law And Public Liability**

In the course of managing any property you are obliged to comply with laws and statutes administered by government and municipal bodies. These bodies impose various liabilities which the property owner/manager should make themselves aware.

The most common examples of statute liability are in areas where you are required by law to effect insurance eg. workers compensation and motor vehicle compulsory third party.

Property, Hotel and Operations Managers should become familiar with the various types of contracts involved in commercial and retail activities. These cover a wide field but the more significant contracts are:

- the head lease or the management agreements
- tenancy and casual leasing agreements
- contracts with independent contractors for cleaning, lift and escalator maintenance, air conditioning and fire protection maintenance, etc.

The major contractual liability from an insurance viewpoint is undoubtedly found in Head Lease and Management agreements. These require the Manager or Head Lessee to fully maintain, repair and replace the property, if damaged, until expiration of the agreement or lease.

Furthermore the contracts usually require an indemnity to the Owner against liabilities imposed upon him for injuries and property damage arising out of the use, occupation or management of the property.

Every contract contains covenants imposing responsibilities on one or other of the parties. These should be carefully examined to ensure they are not unduly onerous.

### **1.2 The Degrees Of Duty Of Care**

In the introduction it was explained that owner/occupiers are required to provide a certain level of care. The duty of care is not the same for all people. It is dependent on a number of issues. To assist in establishing the duty of care required it is more clear to divide into groups the individuals who use your premises and for what reasons. If we take an example of a large shopping complex the following groups of individuals would be attracted different levels of care.

### 1.2.1 Invitees

These are people who by some form you have invited into your complex. This invitation can be through marketing and advertising, or it can be implied simply because you are a shopping complex or your hotel. The greatest duty of care is owed to invitees who, in the case of shopping centres and hotels, are mainly customers, contractors and sub contractors. They are there because of the invitation you extend to them. The duty of care owed to them is relatively simple.

You must take reasonable care to ensure the premises are reasonably safe. They in turn must take reasonable care for their own safety.

If however an invitee spends money for a service ie forms a contract with you, your duty of care is increased. An example of this could be a games arcade where the invitee pays for a ride on a motor cycle game. If as a result of playing this game the invitee is electrocuted, you have failed in your duty of care and undoubtable will be found to be liable.

Without trying to complicate this issue the provider of the game will also be liable and the applicant may be advised to sue this supplier. Certainly if the injured person chooses to sue you then you definitely have an action against the game supplier. It would also be expected that civil charges would be made against the game supplier.

### 1.2.2 Licensees

These are people who enter premises with the permission of the occupier but, unlike invitees, do so without any economic advantage to the occupier. They come in the hope of doing business with you or your tenants and include such people as salesmen, commercial travellers, etc. The duty of care owed to licensees are not quite as extreme as in the case of the invitees.

### 1.2.3 Trespassers

These are classified as people who intrude onto property without permission. The degree of care owed to trespassers, although slight, nevertheless exists particularly in situations where a source of danger is deliberately created or where small children are involved. An example would be where live wires were left exposed after the centre had closed. If some children entered the premises for some reason, despite that reason, if they were injured you would be liable

## 1.3 Types Of Claims

The most common types of claims fall into a small number of categories

- slips trips and falls, make up the majority of claims

- stress and anxiety, due to hold ups, elevator malfunction and
- falling objects ie striking against or struck by

#### **1.4 Common Accident Sites**

- Main thoroughfares and entry areas, - mostly slips trips and falls
- Car parks, due to poor lighting, low headroom, slippery speed humps and painted surfaces, poorly maintained egress and access and ventilation - mostly slips trips and falls
- Stairways, uneven surfaces, chipped or broken, loose articles left on stairs - mostly slips trips and falls
- Hotel lobbies, baggage left at reception and customer trips over own or someone else's bag - mostly slips trips and falls
- Hotel owned restaurants, food on floor. Dance floors - mostly slips trips and falls
- Hotel bathrooms usually falls in shower/bath. Can be very serious as often result in very serious outcome and sometimes death.
- Swimming pools usually falls and common are diving into shallow water. Both of these injuries can be very serious as often result in very severe injury and sometimes death. Other injuries or death often occur as a result of heart attack and stroke and whilst these can be shown not to be in the control of the owner/occupier measures need to be in place to remove the threat of litigation from the point of view contributory negligence
- Gymnasiums or health centres are areas where a variety of injuries occur from simple strain sprains to multiple injuries and even death. Once again there is a certain amount of responsibility carried by the user however negligence through poor signage of rules regulation and supervision may cause your business to be brought into a claim.
- Bars and the local surroundings usually related to alcohol consumption, sometimes slips due to wet floors, objects, food or drink, and objects left on floor - or a combination of all of these.

#### **1.5 Causes of accidents**

Failure to report an existing unsafe situation

Failure to respond in a reasonable time frame

Poor or substandard repairs

Poor cleaning response times

Poor maintenance response times

Unsuitable storage of equipment

Poor maintenance, poor cleaning and or choice of products

Lighting, lux and shadows

Floor surfaces, Floor coverings

Travelators - trolley design, escalators

Poor design steps Vrs ramps

Pre-occupation by the applicant at the time of the injury, ie kids, life, pressure

### **1.6 Agency**

Co-efficient of friction - the resistance of slip between the floor and a persons shoe.

Equipment not fixed at wall or floor ie bookcases

Windows, doors and display glass type

Uneven surfaces ie floor mat meets floor, carpet meets tiles

Water, oil or other spills

### **1.7 Environmental**

Raining,

Windy,

Heat

Cold

Combinations of all of the above

### **1.8 High Risk areas**

entry points

food halls

fruit shops

hot bread shops flour on floor

cake shops, pies hot display cases. Children Vrs adults

kids fast food areas, McDonalds

step into or step down into shops

grills or grates in walk areas (high heels)

car parks dry area before customer comes into centre

vendors and deliveries through public access ways

supermarkets near freezers and refrigerators

car parks

ramps

escalators

travelators

elevators

stairs and steps

swimming pools

gymnasiums

children day care centres

uncovered areas which are thoroughfares, raining, public runs to next covered section

## **2. QUICK REFERENCE GUIDE**

The quick reference guide should be used to gain a brief outline of what to do in an emergency. The guide should be located in several “nerve centres” at «Site\_Names»

In the case of an accident the check list of things to do can be very helpful to ensure in the rush that nothing is overlooked.

The quick reference guide should be displayed in a prominent positions and referred to if emergency contact is needed

Each guide is different for each location ACE offers a service to provide guides which are your location specific.

### **3. ACCIDENT PREVENTION TECHNIQUES**

The Manager of a «Type\_of\_site\_manager» is responsible for accident prevention measures within their «Business», are expected to recognise and rectify potential hazards and procedural failures which may lead to accidents.

Managers and their staff (particularly cleaners and operations people) must pay special attention, on a daily and continuing basis, to those areas of the «Business» in which the majority of Public Liability claims eventuate.

From experience and analysis of the claims statistics over recent years ACE have produced a "short list" of critical risk control measures which when implemented and sustained by management, can be expected to reduce the number of incidents leading a reduction in the numbers of claims.

#### **3.1 Housekeeping**

1. Common areas to be frequently patrolled to check for spillage's and wet surfaces.
2. Respond immediately to public and tenant's complaints relative to spillage's and general cleanliness in common areas.
3. Clean up spillage's promptly and ensure the area is completely dry before public access is allowed.
4. Check non carpeted areas are not slippery after polishing.
5. Ensure that broken and uneven floors, doors, steps, paths and ramps are quickly repaired.
6. Conduct regular "hazard inspections" of your property and rectify all detected problems promptly.

#### **3.2 Occupier/tenant Control**

Do not permit Occupiers/tenants to put display signs or waste material in common areas.

Monitor the use (or misuse) of shopping trolleys, where appropriate, owned by tenants and encourage maximum input by the tenant to minimise claims arising out of accidents involving shopping trolleys. Remember if it possible for a trolley to be taken on a travelator all trolleys in the centre must be the type which have brakes to stop them rolling backwards when they are on the travelator

Amusement Machines

- If used in your property, check that amusement machines are safely located and controlled and that electricity cords do not represent a hazard.
- Depending on the type of machine installed many attract people for long periods of time, often rubbish builds up in these areas which can be a source of slips and falls.

#### Lighting

- Check normal, emergency and exit lights and rectify promptly if not functioning correctly.
- Ensure that all public areas, in and outside the property are adequately lit.

#### Escalators, travelators and Ramps

- The painted safety margin at escalator step edges to be maintained in a clearly visible condition.
- Make sure warning and disclaimer notices are in position at the top and bottom of all escalators and ramps.
- For travelators there are now surfaces which can be applied to prevent patrons/customers from slipping on the ramp.
- The decking and ramp surfaces must be kept clean and in a safe condition.

### **3.3 Car Park**

Maintain clearly defined pedestrian access ways and paint or highlight hazardous areas.

Promptly repair damaged road surfaces, metal joints and speed bumps.

#### Prevention of water damage

Make sure all roofs, drains and down pipes are kept clear of debris.

Promptly repair broken or leaking sprinklers, water pipes and systems.

### **3.4 Service Contractors and Casual Labour**

Monitor the activities of service contractors and casual lessees whilst on your premises and ensure that they have adequate Public Liability Insurance.

### **3.5 Controls on Occupiers/Tenants**

It is a lease condition that a tenant must effect Public Liability insurance which extends to protect the property owner and manager.

Tenants should be requested to insure for a limit of not less than \$10,000,000, recognising that premium cost will often influence a tenant to insure for a lower limit.

It is important that tenants' Public Liability policies are extended to protect their liability for damage to your property (known as a "Tenants Liability" extension), as required by the lease. This ensures that the Owner's Insurers are in a position to recover damages from the tenants' Insurer should the tenants or their employees negligently cause fire, explosion, impact or water damage to the property.

It is important to check on tenants' Public Liability insurance arrangements. Sometimes organisations see this as too time consuming and this is often treated as commercially impractical. What you must bear in mind is the failure of a tenant to obtain suitable Public Liability cover could mean that the property owner/manager is called upon to pay for claims which are avoidable if the tenant has adequate insurance.

### **3.6 Casual Leasing**

Property managers and/or managing agents must obtain and check evidence of Public Liability policies held by all casual lessees.

This is particularly important in the case of amusement machines installed in common areas or any other high hazard liability exposure activity.

Every casual lessee must provide a copy of their policy document or at least written evidence which indicates:-

Name of Insurer

Policy expiry date

Sum Insured - Note: must be at least \$10,000,000

That "Tenant's Liability" extension is included in the scope of cover provided.

It is the responsibility of the property manager/managing agent to ensure that all casual lessees maintain adequate Public Liability insurance.

### **3.7 Controls on Contractors**

Property managers/managing agents must obtain and check evidence of Public Liability Insurance held by all service contractors eg. Cleaners, lift and escalator maintenance, fire protection, air conditioning maintenance, etc.

You should not totally delegate responsibility to these organisations once they enter your property and your staff should monitor service contractors' activities.

Failure of a contractor to hold adequate Public Liability (and Workers Compensation) insurance, may result in a claim being borne unnecessarily by your Insurers and you must obtain a copy of the contractors' policy document or at least written evidence which indicates:-

- Name of Insurer
- Policy expiry date
- Sum insured - Note: must be at least \$5,000,000
- That "Principals Liability" extension is included in the scope of cover provided.

It is the responsibility of the property manager/managing agent to ensure that all service contractors maintain adequate cover.

#### Hazard Inspection, Recording and Rectification

Courts can be expected to be impressed by property owners who can produce evidence of concern for public safety. File records which clearly indicate the sincerity of their efforts in overcoming potential problem areas will help in resisting or reducing court awards.

Records must be established and permanently maintained, for all properties, which list any detected hazards and details of the date and method of rectification of the hazards.

#### **4. EMPLOYEE TRAINING**

It is the responsibility of the «Type\_of\_site\_manager» to ensure that employees required to perform daily inspections have been properly instructed in the performance of these duties. It is essential that they fully understand the nature of the task, its scope and the activities to be covered during the inspection.

Staff involved should understand how to complete the check list form correctly since the form may eventually be tendered as evidence to a Court to substantiate action taken by the manager and/or owner at the property on a specified date.

Training should be provided to all employees who have a responsibility in the maintenance of any part of a public liability prevention program.

This training must be recorded on the trainees personnel file as a record. This record must show when the training took place who delivered the training and development course and what the course covered, how long the course ran for and the Aims, Objective and Learning outcomes. It is imperative that there is also a measure of competency related to the individual and a record of the standard achieved. From a recognition point of view it helps if a certificate of achievement issued to the trainee stating that the course was carried out and management recognised that the required level was obtained.

ACE offers courses on public liability awareness training for staff at all levels.

## **5. ACCIDENTS**

### **5.1 What Is An Accident**

An accident is any unplanned and unwanted occurrence

An accident is made up of a number of separate events which together result in an occurrence. We describe this occurrence as an accident. Usually if you take away just one of these events, an accident could not occur.

Take the example of a person who slips on a wet floor.

The accident is the slip

The outcome is the injury.

The severity of the injury will be determined by:

- age
- size
- fitness
- reflexes
- clothing
- male/female
- whether they were carrying anything in their hands
- whether they strike against an object on the way down
- the part of then body which is injured
- previous injuries
- shock absorption qualities of the floor, ie concrete, vinyl, wood
- a host of pre-existing medical conditions and
- the time taken to seek medical assistance and rehabilitation intervention

The accident factors are:

- the area must be accessible
- the person must be walking over that area at that time
- the floor must be wet in that area at that time
- the individual must be wearing a shoe which do not grip as well in wet environments
- the floor must be of the type where the coefficient of friction (the resistance to slip) is reduced by the introduction of water

### **5.2 Accident Prevention**

Without getting too complex it is easy to see that if just one of the accident factors were to be removed the chain of events would be broken and the accident is unlikely to occur.

This leads us to consider prevention:

If the individual was not there then the accident would not occur

Prevention - Rope off areas which are wet

If the floor didn't become slippery when it became wet

Prevention - Choice of floor and cleaning products

If the floor was not wet

Prevention - Cause of water on floor

if wet from cleaning - can traffic areas be roped off until dry?

if wet from something leaking - can leak be fixed before it gets on the floor or rope off area

if wet from rain outside - can mat be put down until dry outside

If shoes grip when wet

Prevention - Not practical for customers or visitor, but not impossible for some staff applications

Prevention is the process of controlling or removing links in chain events thus breaking the chain which will reduce the likelihood of accidents.

Many accidents are foreseeable and therefore are preventable. Some causes are easy to control, others are difficult or even impossible to control. In practice however, it will be found that 90% of accidents can be eliminated by implementing a process of simple good practice.

### **5.3 Accidents resulting in death or serious injury**

In the event of any accident which results in serious injury or death, you will be required to immediately rope off the area and leave all objects in place as this will form part of the investigation

Serious accidents and accidents resulting in death must always be investigated to ensure that there are no suspicious circumstances. The Police should always be called to conduct these investigations. If you are in any doubt the local Authorities should be called.

It will be invaluable if any witnesses could remain to give statements however at the very least someone should take witness contact details in order to ensure they can be contacted at a later date.

If the injury has been a violent or a traumatic occurrence it may be wise to offer the services of a councillor to witnesses or the family of the injured or deceased person.

It will not always be the case that this will be covered by insurance.

## **6. FIRST AID**

Following an accident it is a moral requirement for you to administer first aid. Whilst it is preferable for a qualified first aider to give assistance to an injured party, untrained medical assistance has never resulted in any legal liability.

In the past may insurers have taken the line where if an injury occurs you should give a minimum of assistance. This is certainly not an acceptable practice. It is better to give as much assistance as possible. If the party is going to make a claim they will make a claim your supportive actions of assistance in the majority of case will go further in appeasing a situation rather than inflaming an already liable situation.

Treat injured persons the same way you would treat a member of your family at an accident site. This treatment is not an admission of liability and could go along way towards resolving the claim rather that a court room battle.

## **7. ACCIDENT RECORDING**

### **7.1 Admission of liability**

An accident usually highlights deficiencies in the interaction between the design of the building, plant or equipment, the behaviour of the individuals and the environment existing at the time.

It follows that accident prevention must be directed towards the control of any deficiencies detected. A useful strategy is to consider these under the following headings:

Behaviour of individuals (person)

Design of building, plant and equipment (building/machine)

Environment existing at the time (environment)

Accident investigation is plagued with issues which do not help to prevent accidents. These include such allegations regarding injured persons as follows:

- was careless
- was from some specific ethnic background
- should have used common sense

Some persons even attribute an accident to fate or an "Act of God"! These so called "reasons" for accidents are far too general to be of any value in determining accident related factors and obstruct the objective of developing a safe environment.

Often it is implied that someone was to "blame for the accident" and this has led to the quite inaccurate belief that human error "causes" accidents. In some cases it is true to say that certain human behaviour was necessary for an accident to have occurred, it is however totally wrong to "blame" human error alone as the sole accident cause.

Many terms in traditional safety management jargon have in-built value judgements expressed. Such terms include unsafe act, unsafe conditions, fault, blame, carelessness and cause. These terms tend to create the impression of "single factor causation" rather than highlight the often considerable number of related factors present in an accident.

## **8. POST ACCIDENT PROCEDURES**

### **8.1 Loss assessors**

Loss assessors are insurance or applicant solicitor investigators who thoroughly investigate accidents and make recommendations to their principle on the liability of a particular matter.

Most loss assessors are appointed by your insurer, however sometimes a loss assessor will make contact representing the applicants solicitors.

An assessor should never be allowed access to your site until your have established who appointed them. Assessors usually phone before they arrive to make an appointment. Always verify an assessors details with your insurer before you allow the assessor access to your site.

If they are not appointed by your insurer it is better if they are not brought on site.

### **8.2 Making statements**

An assessor will often prepare a case for your solicitor. The assessor will need to take detailed statements from employees who either witnessed the accident or had some type of post accident involvement. The assessor will ask specific questions relating to the claim. He will assist you in framing your words so as not admitting liability.

An insurer appointed assessor should receive full co-operation in for filling his task.

The local authorities such as police or government representatives may conduct their own investigation into any serious accident. You will be required to assist them with their investigation. They may require a statement. The rules which you should follow are as follows:

- state the facts only relating to the accident, tell the truth.
- give exact details of your involvement
- do not give opinions and
- do not make reference to prior incidents or accident unless especially requested.

### **8.3 Accident investigation techniques**

Accident investigation is the systematic reconstruction of the occurrence. It is important to collect as much information as possible at the time of the accident as it is likely that key contributory factors may not be the same at a later date.

The main aim for Accident investigation is solely to put measures in place to prevent re-occurrences not to assign blame.. Liability assessment will be carried out by an insurer appointed assessor the information gathered at the initial investigation will be essential for a productive assessment

An accident would be investigated in the following circumstances

- People or a person has been injured
- damage to property, or
- an event which interfered with a business activity

### **8.4 Steps to a successful accident investigation**

Information collection

Information collection is a very important issue without reliable information adequate prevention techniques may not result and poor or incomplete information may lead to vital facts being excluded in court resulting in a considerable increase in liability. Adopt a systematic approach to the collection of information. Deal with the people first, then the accident site, and lastly the environment

Collecting information from injured parties and witnesses.

It is not your responsibility to get statements nor is it necessary for you to have any documents signed . Get the facts and write them down. If the witnesses are willing to give you their Name and Address, the information which follows is useful and may even be useful at a later date, such a court appearance.

Some witnesses and even some injured individuals often do not want to be identified. Take a record of your discussions with them as this information can be used to help piece together events leading to the accident and it may assist you in developing an accident prevention solution reducing the likelihood of recurrence. Remember some injured people are embarrassed about their accident and they do not wish to be identified and some witnesses don't wish to be contacted at a later date. In both of these cases respect their wishes but still record your discussions with them and keep these notes with you accident investigation.

#### **8.4.1 The Accident Scene**

Accident scene are full of evidence relating to the accident. When there has been a serious accident keep the public away if possible. Take photographs of the scene and record

damage, pin point the actual site and photograph anything that may indicate causes of the accident.

#### 8.4.2 The Accident Environment

Finally take notes of the environment this include the weather if it was a contributor, surfaces, lighting etc.

#### 8.4.3 Accident Analysis and preventative measures

Analyse the accident and identify related factors. Make sure you have looked at all the information. Reconstruct the accident on paper by assembling all the facts.

List the causes of the accident to determine how these may be controlled.

While the investigation proceeds, management must be mindful of their responsibility to ensure their own and the organisation's integrity is not compromised. Investigations must be kept objective, factual and free from any attempt to assign blame.

#### 8.4.4 Accident Factors

In every accident there will be related factors from the person, building/machine and environment areas. Without these, an accident cannot occur.

The difference between the various factors is not their relative importance in terms of causation. A distinction does however exist in terms of "controllability" of the causes, which dictates the course of corrective action. Some causes are easy to control, others are difficult or even impossible to control. In practice however, it will be found that most causes lie between these two extremes.

### **8.5 INVESTIGATION GUIDELINES**

Investigation must be carried out as soon as possible after the incident has taken place, since the reliability of witnesses will reduce if there is any delay in questioning. All incidents should be investigated by a member of the management team.

#### 8.5.1 Accident/Incident Report Forms

Accident/Incident Report Forms (Appendix 3) enable the routine personal accident details such as name, place, time to be easily recorded. Other areas of the form allow related factor details to be added.

Determining the answers to the following questions will ensure the investigator is able to conduct a thorough analysis of the available evidence. This will lead to a plan of action or recommendations to prevent further or similar accidents:

1. What actually happened
2. How did it happen
3. Why did it happen
4. Action taken

The most thorough accident investigation is worthless if the corrective action is not taken. The investigation must not be considered finished until "follow-up" allows the responsible manager to determine that recommended corrective action has been implemented. The report form should then be signed off by that manager as complete.

#### 8.5.2 Practical Hints

Visit the scene of the accident. It is rarely possible to gain a complete feeling for the situation without being present to observe. Observation will also prompt questions as your thoughts adjust to the circumstances.

Photographs are very useful in recording the scene for future analysis. Remember, you may be intimately familiar with the area/activity, but it may not be as you remember it on the occasion of the incident under investigation.

Remember, investigations must be carried out in an objective manner and be based on facts

There is always the possibility of getting incorrect information from persons who, rightly or wrongly, have a feeling of responsibility or guilt.

It is not possible to totally eliminate liability incidents. However, thorough investigation focused on accident prevention can go a long way towards reducing needless pain and suffering or unnecessary loss or damage and as a consequence prove a very effective tool in controlling the number of incidents which may lead to claims.

Since the cost of insurance is directly related to the cost of claims, accident investigation has a significant long term benefit in controlling the escalation in insurance premiums.

### **8.6 Informing the local Authorities**

The rules for the reporting of accidents vary from state to state . There are extreme variations in the required level of reporting from country to country. If there is a serious accident call the local police and explain what has occurred. The local police should be able to assist you if any other local Authorities are need.

## 9. CLAIMS

After you have attended to the injured person the following procedure is to be adopted in respect of all potential public liability claims involving injury or damage to the property of third parties:-

If an accident is obviously serious please telephone details to your Insurer immediately, otherwise notification can be made by completing a "Public Liability Accident/Incident Report". A sample can be found **Appendix 3 Accident/Incident report**. In the back sleeve of this manual there are a small number of copies for immediate use. additional supplies are of the form are available from the ACE Office.

Forward the completed Incident Report form to the ACE office. The claim is then recorded and will be dealt with by ACE insurance.

Upon receipt of the completed claim form, the Insurers will decide whether to negotiate direct with the third party or appoint a loss assessor to attend.

If a loss assessor is appointed, you will be informed and provided with the name of the assessor involved.

In the event of injury accidents, you are expected to render reasonable assistance to the injured person but never admit liability under any circumstances.

If an injured party approaches the company to lodge a claim or wishes to know who your insurers are, you should co-operate as much as possible. Accept any papers, doctors bills, ambulance bills and any other accounts from the claimant and forward these to your insurer as soon as possible.

- Do not discuss the accident with the claimant
- Do not attempt to negotiate with a third party or their legal representatives.
- Do not admit liability
- Unless there is an arrangement in place Do not make any payments to the claimant.

### 9.1.1 Correspondence

Correspondence received from the third party or their solicitor should be forwarded immediately to the insurer, but should be acknowledged by you. A sample letter of acknowledgment can be found at **Appendix 1 Correspondence**

If any advice or assistance is required relative to a claim or possible claim please contact ACE Insurance in your State.

## **9.2 Instructions to staff**

It has become evident during claims investigations that some property management personnel are not fully aware of the consequences of admitting liability at the time of an accident whilst other staff are not confident of the correct procedure to be adopted in dealing with accidents.

The following are detailed instructions to staff on how to deal with Public Liability claim situations.

These instructions should be circulated to all existing employees who are likely to have public contact, and all new employees must be made familiar with the procedures as part of their induction training, to ensure consistency in dealing with accidents.

## **10. PUBLIC LIABILITY**

### **10.1 Small losses**

It is common practice for people who injure themselves on your premises to hold you responsible for their medical costs, clothing repairs, lost wages, etc. The fact that a person is injured on these premises does not necessarily entitle them to compensation, because you must have done something which contributed towards the accident before becoming legally obligated.

It is often common for people who have had minor injuries and damage to clothing to approach the manager. A very firm line should be taken with personal injuries, as an agreement to pay a \$20 doctor's bill today could result in your being held liable for a serious recurring injury at a later date.

It is certainly not the intention to use an insurance policy to recover the cost of replacing such things as torn stockings, yet an offer to replace might well appease an otherwise angry customer. Whilst we do not recommend that you adopt this practice, if such a loss is settled, centre managers should ensure that the third party signs a standard Form of Release (Appendix 2).

### **10.2 Losses by tenants**

There have been instances where tenants' property has suffered water damage. Whether Management are liable depends on the actual cause of the damage. If gutters are allowed to become blocked and water overflows into the premises you could be liable. If extraordinary rains cause clean gutters to overflow, you are not. If roofing is inadequate or not kept in good repair, you could be held liable, however, if winds of exceptional violence damage the roofing then the resulting losses to tenants must be treated as fortuitous and borne by them. Naturally individual leases would have to be considered, to determine individual obligations.

Some tenants believe that damage caused by water discharged from sprinklers and water systems is automatically the landlord's responsibility but this is not necessarily so, for again it depends on how or by whom the occurrence was caused. All tenants should cover both sprinkler leakage and water damage in their Fire or I.S.R. insurance policy.

### **10.3 Losses in car parks**

Claims which arise in public car parking areas adjacent to shopping centres are of no concern *UNLESS* you are instrumental in causing the accident. If two customers cars are in a collision, the ensuing claims are not your responsibility unless, for example, it could be shown that the negligent act of your car parking attendant caused the collision. Similarly,

you may be held liable if hazardous areas in car parks are left unrepair or are not clearly identified and a vehicle is damaged as a consequence.

In car parking stations where a charge is made for parking cars, there is a different problem altogether. Here, you are also legally liable for negligent acts, but you should attempt to contract out of that liability through the issue of printed disclaimer tickets to each customer.

Recent consumer protection legislation has made avoidance of claims for damage to vehicles in car parks increasingly difficult and your Public Liability insurance policy is regularly required to respond these days.

It may be an option for you to rent or lease the car park. This can transfer the liability provided that your lease contract excludes you from any operation.

If there is a failure to immediately report and rectify a broken window or door, or other fault in a building which subsequently causes an injury, then you have not exercised proper care and are accordingly liable. If spillage's and water affected surfaces are not promptly cleaned and common areas are not regularly patrolled by cleaning staff, then you are vulnerable to claims following falls which may occur.

The claims examples could go on endlessly but, basically, if injury or property damage arises from circumstances which indicate that you may be negligent in the duty of care owed to a person, then the accident must be reported to the Insurers in accordance with usual claims procedures.

## **11. INSPECTIONS**

Management must conduct inspections to cover important issues relating to public liability exposures.

Section 3 of this manual clearly details which areas should be targeted for hazard inspection.

It is expected that in most retail properties these inspections will be made on a daily basis records should be kept of these inspections detailing the date, the areas inspected and any required action. Subsequent inspections should note any work which has been done on an area which previously has had outstanding action required.

Inspections in commercial properties will be less regular depending on the size, nature and degree of risk involved.

## **12. PROGRAM CO-ORDINATOR**

For any program to work a driver of that program must be appointed and must have the responsibility and authority to “make things happen”.

It is recommended that a specific person be appointed, in writing, to co-ordinate risk control activity and responsibility. This activity can be included in the selected person's job specification or be the subject of a separate directive.

Managerial support of the program is essential to the success of the program.

### 13. TRIPLE A “AAA”

ACE offers a Risk Management program known as “Triple A” or AAA. Triple A covers all aspects of risk management and hazard elimination. This program offers a defined and detailed systematic inspection covering the most frequent areas where claims occur.

A sample of the AAA program follows;

<b>4.1 DOCUMENTATION OF PUBLIC LIABILITY PROCEDURES</b>	
<p>A documented procedure detailing actions</p> <ul style="list-style-type: none"> <li>• What to do in the event of an accident</li> <li>• Who is responsible for which activities</li> <li>• Investigation procedure</li> <li>• Any follow up</li> <li>• Responsibility and accountability</li> </ul>	
<b>RATINGS:</b>	
A	Some public liability rules or procedures are in operation but they are not documented or they do not meet ACE standards.
AA	Public liability rules and procedures are documented but improvements are required to meet ACE standards.
AAA	Documentation of public Liability rules and procedures have been developed and meet ACE standards of: <ul style="list-style-type: none"> <li>• fully covering the list above</li> <li>• has management support</li> <li>• is an operational document</li> <li>• is regularly reviewed and</li> <li>• responsibility and accountabilities have been clearly defined</li> </ul>

An inspection or assessment determines what systems are in place to meet with the above requirements. Based on this assessment a category is given either A, AA, AAA. If you receive a score of AA, an improvement could be made to AAA by carrying out the activities of a AAA score. AAA sets goals and details exactly what must be done to improve. AAA covers many traditional risk management elements.

## 14. APPENDIX

### 14.1 Appendix 1 Correspondence

Sample correspondence received from an injured person or their representative

<b>YOUR LETTERHEAD</b>
Your Address Date
Injured Person or Representative Address
<i>Your reply to their correspondence should be restricted to the following:-</i>
Your letter of (Date) is acknowledged and has been forwarded to the Owner's Insurer.
The matter is receiving our attention and you will be contacted as soon as possible."
Signed by Manager

*A copy of your reply should be sent to your insurer detailing any information you have in relation to the case or a claim number if one has been issued*

**14.2 Appendix 2 Form of Release**

**FORM OF RELEASE**

In consideration of the sum of..... (\$ ) paid by (insert name of building owner) I/We ..... Of ..... Do hereby release and forever discharge the said (insert name of building owner) from all action and suits claims demands damages accounts costs charges and expenses of every description whatsoever which I/We now have or at any time hereafter may have or but for the execution of these presents could or might have against the said (insert name of building owner) for or by any reason of or arising out of the accidental injury and/or property damage which occurred on the ..... Day of ..... 19.....

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Signature

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Witness

### 14.3 Appendix 3 Accident /Incident Report

Following is a simple Accident/Illness/Incident Recording Form. Forms can be simple or more complicated. The design of your form should keep in mind the resources available, the levels of training required, the follow up system in place and the likelihood that an incident will become a claim.

*Note this is not to be used as a claim form*

GROUP	
REGISTER OF INJURIES	
ACCIDENT/ILLNESS/INCIDENT/INJURY REPORT FOR CUSTOMERS	
<b>INJURED PERSONS DETAILS (Who was hurt or injured)</b>	
Surname	First Name
Address	
Suburb	Post Code
Sex M/F <input type="checkbox"/> D.O.B	Approx Age if D.O.B not given
<b>WHEN DID THE INJURY OCCUR</b>	
Date of injury	Time of injury
<b>WHERE <i>EXACTLY</i> DID THE INJURY OCCUR</b>	
<input type="checkbox"/> Inside	
<input type="checkbox"/> Outside	
<i>In this section give as much information as possible</i>	
<b>HOW DID THE INJURY OCCUR</b> What happened (slip, fall)	
AGENCY (What caused the injury to occur ie wet floor, foreign object, escalator, stairs)	
<b>NATURE OF INJURY</b> (ie cut, bruise, sore back)	
<b>LOCATION OF INJURY</b> (Position on the body ie neck, leg) <small>Accidents not requiring immediate medical attention use location recording form</small>	
<b>INITIAL TREATMENT/WHO FILLED OUT THIS FORM</b>	
<input type="checkbox"/> First Aid given by	Name
<input type="checkbox"/> Ambulance	Address
<input type="checkbox"/> Sent to Doctor	Suburb
<input type="checkbox"/> No treatment	Post code
Telephone Contact Number Business/Private <input type="checkbox"/> ( )	
<b>WHERE THERE ANY WITNESSES (who saw what happened)</b> Y/N <input type="checkbox"/>	
Name	
Address	
Suburb	Post code

#### **14.4 Appendix 4 Hotel Personal Effects Liability Notice**

Laws between States and Countries vary. A notice should be displayed in all Hotel rooms to limit your liability. A notice similar to the notice below should be developed in conjunction with your legal practitioner to enable the greatest level of protection.

## **NOTICE**

### **LOSS OR DAMAGE TO GUESTS**

Under the Hotel Proprietors Act a Hotel properties Manager may in certain circumstances be liable to make good a loss of or damage to a guest's property even though it will not be due to any fault of the proprietor or staff of the Hotel

This liability however

- extends to the property of guests who have engaged sleeping accommodation at the hotel
- is limited to \$100 for any one article and a total of \$200 in the case of any one guest, except in the case of property which has been deposited or offered for deposit, for safe custody
- does not cover motor vehicles property left inside a vehicle

This notice does not constitute an admission either that the Act applies to this hotel or that any liability exists.

## 14.5 Appendix 5 Swimming Safety Notice

# NOTICE

## SWIMMING POOL SAFETY

### FOR THE SAFETY OF ALL WHO USE THE POOL

Guests are welcome to use the Hotel Swimming Pool but do so at their own risk

Guests are requested to read and observe all notices displayed in the pool area

We ask that you refrain from the following

- Do not swim unaccompanied
- Children under 15 must be accompanied by a supervising adult.
- Alcohol is forbidden in the pool areas
- Guest must not enter the pool area if they are under the influence of alcohol

An emergency alarm is provided to summon assistance in an emergency

The Depth of the pool is \_\_\_\_\_ at the shallow end ( closest to this sign)

The Depth of the pool is \_\_\_\_\_ at the deep end ( furthest away from this sign)

## 14.6 Appendix 5 Swimming Pool Rescue and Resuscitation Notice

# NOTICE SWIMMING POOL SAFETY RESCUE AND RESUSCITATION TECHNIQUES

IN THE EVENT OF A SUSPECTED DROWNING FOLLOW THESE RULES:

Press the emergency buzzer to summons help. In all cases where a person has loss consciousness call an ambulance.

### STEP 1

Without endangering yourself, remove the person from the water. If the casualty is too heavy turn them face up and float them to the shallow end of the pool. As soon as help arrives remove the casualty from the pool.

### STEP 2

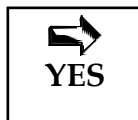
Is the casualty breathing ?



Place the casualty on their side and check their breathing every two minutes.

### STEP 3

Does the casualty have a pulse?



Clear their airway, pinch their nose and commence artificial respiration. You should give on breath every 5 seconds.

You should check for a pulse every 2 minutes and maintain this until an Ambulance or medical help arrives.

You need to commence CPR. Cardio-pulmonary resuscitation. Find the central point between the breastbone. Position the your hand on the centre of the breast bone and place the heel of your other hand below this position. The lower hand is now placed where the heart lies. Excerpt pressure through the heel of you hand using your body weight. **Compress the heart 15 times and ventilate the body 2 times evert 15 seconds.** This pace needs to be maintained. ie 60 compressions a minute and 8 ventilations. You should check for a pulse every 2 minutes and maintain this until an Ambulance or medical help arrives.

