Strangers on Your Property and Attractive Nuisances: What's Your Liability Exposure?

Strangers may come onto your property for all sorts of reasons: a child chasing a ball that accidentally landed in your yard; a meter reader; customers for a yard sale, etc. What's your liability exposure, and does your homeowner's insurance policy provide the coverage you need?

There is normally no particular care required of property owners to safeguard people who come onto their property whether the person has been invited or is a trespasser. However, if there is a dangerous condition on the property that is not readily apparent and involves something man made, the owner or occupier of the property may have a duty to warn both strangers and guests of that danger. If, for example, there is a hidden electrified fence, or a bridge that looks safe but is actually rotten and dangerous, you might have a duty to post a warning to protect anyone who might come onto the property. If you fail to warn about a dangerous condition and a person becomes injured, you will likely be partially, and perhaps totally, liable for the injury.

Whether you have insurance coverage under the personal liability section of your homeowners' policy would depend on the insurance company's investigation of the event. If investigation reveals that you were aware of the danger and didn't take reasonable care to prevent people from being injured, the company would likely deny coverage. It might even cancel your policy and you might have difficulty getting a new one.

The duty to warn of a dangerous condition is generally not applied if the hazard on the property was created by nature or the result of natural processes.

"Attractive Nuisance"

Insurers call an item that might attract children an "attractive nuisance." An attractive nuisance is any object that can be dangerous or deadly to a child, but the child is too young to realize the danger. Swimming pools are the classic example of something that would attract a child and could also be very dangerous to a child. If there is anything on your property that might attract children -- such as pools, fountains, machinery, old appliances, or stacks of building materials -- you have a special legal responsibility to try to prevent any child who might wander onto your property from being injured. Property owners or occupiers can be liable for injuries a child may sustain when investigating an attractive nuisance -- if they have failed to take reasonable precautions to prevent children from being hurt. Most natural conditions, such as a lake or a naturally steep bank, are not considered attractive nuisances. To be liable for injury, the owner or occupant of the object must create or maintain the harmful object.

Obviously, the attractive nuisance concept applies to anything that might attract small children, but it may apply to older children as well if the child was unlikely to understand the danger. The owner is more likely to be found liable if children were known to play in the area and he failed to take reasonable precautions to prevent the injury. Reasonable precaution will vary depending on the item. Locked fences around swimming pools, trampolines, or old machinery; removing doors from old refrigerators; and storing construction materials safely are some reasonable precautions. Often, such measures are required under local laws. The law doesn't require owners to childproof their properties but it does expect people to be alert to potential dangers to children and to take reasonable steps to prevent harm to those too young to understand the danger.

Ask your insurance agent what precautions you should take concerning dangerous but necessary objects -- for instance, swimming pools, wells, or machinery. If the company requires a fence, install it, or you could lose your coverage. And, don't be surprised if your premiums increase for the pleasure of having a pool, trampoline, or other attractive nuisance.