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The Truth Behind Michigan's "New" Owner Liability Law for Trespassers

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The Michigan Legislature recently enacted legislation outlining a property owner's liability for the injury or death of a trespasser. Although the statute is technically "new," the legal principals expressed by the legislature simply mirror those applied by Michigan courts for decades, developed through case law.

For the most part, this "new" law has not changed the legal landscape, as it pertains to a property owner's potential liability to trespassers. However, this newly enacted statute may act as a reminder for property owners to assess their risk of liability to an injured trespasser and to take the appropriate steps to reduce or eliminate such risk.

The new law, codified at MCL 554.583, generally provides that a property owner owes no duty of care to a trespasser and is not liable to a trespasser for physical harm or death. As previously explained through case law and now enacted as a statute, however, the general rule contains four exceptions to the general rule. A property owner could be liable to a trespasser if the property owner:

1. Injures a trespasser by willful and wanton misconduct,
2. Knows of a trespasser's presence, or should have known of a trespasser's presence on the land by the exercise of ordinary care, and fails to use ordinary care to prevent injury to the trespasser arising from active negligence,
3. Knows, or from facts within the property owners knowledge should have known, that trespassers constantly intrude on a limited area of the land and a trespasser is harmed as a result of the property owner's failure to carry on an activity in that limited area involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety, or
4. Has an artificial condition on the property that injures a child trespasser and all the following apply:

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- The property owner knew that a child would be likely to trespass on the place where the condition exists.
- The property owner knew or had reason to know of the condition and realized that the condition would involve an unreasonable risk of death or serious bodily harm to a child.
- The injured child, because of his or her youth, did not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it.
- The utility to the property owner of maintaining the condition and the burden of eliminating the danger is slight as compared to the risk to the child.

The substance of the law pertaining to trespasser liability has not changed. Furthermore, all immunity and defenses applicable to trespasser liability remain intact.

If you would like more information about the foregoing or any other Real Estate law needs, please feel free to contact one of the members of Butzel Long's Real Estate Practice Team lawyers.