

Bears in the Breezeways? Apartment Project Owners and Managers Could Be Liable for Bear Attacks

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The Florida Fish and Wildlife Conservation Commission (FWC) receives numerous telephone calls each year reporting black bear sightings significant enough to prompt safety concerns. Since 2013, there have been several instances of bears attacking humans in Florida. As human populations grow and natural habitats shrink, it is increasingly likely that bears may injure people and/or damage their property, especially as new developments encroach into black bear habitat.

One potential problem recently surfaced involving an apartment project with multi-story buildings that offered tenants what is known as "valet" trash service, meaning that the project management arranged to pick up trash bags that tenants placed outside their apartment unit doors, so that tenants did not have to take their trash to a dumpster or compactor. While this makes sense in urban areas, it poses problems in areas frequented by bears. In this particular case, bears (which have a keen sense of smell) were attracted into the project from nearby bear habitat and began entering stairways and breezeways to get at the trash, which contained high-calorie leftovers that presented much easier pickings than foraging in the woods. This is especially problematic in the springtime, when mother bears are teaching their cubs where to look for food.

The last place a tenant expects to see a bear is outside their door on the second floor of an apartment building. A bear encounter in these close quarters, especially

involving a mother bear who may view a human as a threat to her cubs, is not likely to end well. If a tenant or visitor is injured or killed in such an encounter, the apartment project owner and manager are likely to face a claim for liability.

Generally, an owner of land does not have an obligation to warn others about the dangers of animals in their natural habitat, or protect others from wild animal attacks. Yet it is well settled that an owner or occupier of land must exercise ordinary care in the management of their property, and the breach of this duty gives rise to a cause of action for negligence. While an owner's duty to exercise ordinary care is not expected to prevent all injury, an owner is expected to use reasonable care to discover dangerous conditions on their land and to protect permitted entrants from those conditions.

As such, a landlord who owns an apartment project in or near bear habitat can be liable to tenants and visitors for injuries occurring in common areas resulting from bear incursions if the landlord knows about the incursions, but fails to take reasonable steps to prevent them. These steps would not only include discontinuing valet trash service, but also ensuring that trash dumpsters at the project are secured against entry by bears. This particular apartment project also had a children's playground located along one edge of the property, adjacent to the woods which contained the bear habitat. When an FWC representative visited the project, they also recommended that the playground be fenced. Although fences are not insurmountable obstacles for bears, they can reduce the likelihood of an incursion.

In light of all this, owners of projects in bear-prone areas should be mindful of the fact that bears can enter the project seeking food, including household trash, drippings from Bar-B-Que grills, pet food bags stored outside, and even food items (or their wrappers) left in cars. FWC recommends that apartment project owners in bear-prone areas consult with them about what practices can be implemented to make the project "bear-wise." This will reduce bear attractants and thus the likelihood of bears entering into or lingering in the community looking for food. Failure to do so could result in the project owner and/or manager being found liable for an attack. Of course, if an owner adopts such a policy, then it will be expected to comply with and enforce that policy, and its failure to do so could result in liability should an attack occur.

While owners and management companies carry liability insurance, sometimes such a policy may not cover animal attacks, or may have an "animal liability exclusion endorsement" which caps the insurance coverage for them.

Resources are available from FWC for any owner or management company that wants to consider making their property "bear-wise." There are a number of practices that FWC recommends in order to reduce the likelihood of bear incursions, the most significant being the securing of trash. FWC also encourages schools and businesses in bear-prone areas to enact similar practices, especially installing bear-resistant mechanisms on trash dumpsters. By limiting the likelihood of bear incursions, you will limit your potential for liability should a bear cause property damage or personal injury on your property.



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