

A guardrail with horizontal ladder railings
COURTESY KASDAN LIPPSMITH LLLC

Inspect Your Railings & Walkways NOW

Hazards in these areas
harm your guests
and usually guarantee
your liability

BY BRETT ALEXANDER-ESTES

A recent fatality at Ala Moana Center that occurred when a railing reportedly gave way is still fresh in the minds of many Hawaii residents. As the Ala Moana accident and similar tragedies show, maintaining safe railings and walkways is critical at Hawaii's commercial and hospitality properties.

It's no easy task.

Hairline cracks in a walkway . . .
specks of rust on a balcony . . . too much

space between railing pickets—these tiny catastrophes-in-the-making are common at many Hawaii properties.

The source of these dangerous conditions “can be bad design, defective construction or inadequate maintenance, or any combination of these factors,” says Kenneth Kasdan, a senior partner at Kasdan LippSmith LLLC, a Hawaii law firm.



Kenneth Kasdan

Design Defects

Railings, whether on a balcony, stairway or any platform, must conform to



Corrosion of a railing stanchion

COURTESY KASDAN LIPPSMITH LLLC

On the Alert

Owners and operators of commercial and hospitality properties have “a duty to maintain a premise free from unreasonable risk of harm,” Kasdan emphasizes. “Inspections and maintenance are key.”

The owner or operator of a hospitality property, he says, “protects itself, as well as its guests, by having a formal, written maintenance and inspection procedure, documenting that it is being followed, and seeing that any repairs or deficiencies are promptly and properly acted upon.”

state and county building codes. However, many Hawaii buildings are more than 30-40 years old. Railings on these buildings may be too low by current standards, or may have more space between railing pickets or between the bottom railing and the floor than is currently allowed.

Other design defects include railings that run horizontally—“four or five above each other,” Kasdan says. “This allows people to potentially use the railing as a ladder.”

Moreover, says Kasdan, even if codes are followed in the design and construction of a railing system, the building code is “a minimal standard, not the ultimate safety standard.”

Deterioration

Most commercial buildings in Hawaii are made of concrete reinforced with steel rebar. If these buildings are near the ocean, their railings and walkways deteriorate rapidly.

“Ocean air contains salts and chlorides,” notes Kasdan. Chlorides attack rebar, which then rusts, expands and cracks the surrounding concrete—a defect known as “spalling.”

Many concrete lanais and balconies at Hawaii’s hospitality properties—and their metal railings—fall victim to spalling. Concrete spalling problems can occur at the base of aluminum railing posts, typically due to rusting of the embedded reinforcing steel, and weaken the railing post.

Spalling degrades concrete walkways, too, and can result in tripping hazards.

Liabilities

“In Hawaii, as in virtually all other states, a ‘guest’ of a hotel or restaurant or ... a mall, does not have to be a paying

patron for the facility to have responsibility,” says Kasdan. “So long as the business is open to the public, the owner and operator owe its invitees a duty to not have premises which present an unreasonable risk of harm. You must anticipate that it will not only be alert adults, but children, or even intoxicated guests.”

Kasdan cites the 2006 death of a toddler who fell from the balcony of a Waikiki hotel. “The issue was whether the child climbed over the safety railing or squeezed through the vertical slats,” he says. “How the claims concerning this accident were resolved is not reported in the public record.”

It doesn’t take a fatality to trigger a lawsuit: damages are frequently awarded when a trip-and-fall injury occurs on a level walkway with an elevation defect of half an inch or more.

Expert Inspections

“Hotels, hospitality facilities and restaurants should have their lanais, elevated walkways, exterior stairs and the like periodically inspected for safety,” says Dana Bergeman, founder and



Dana Bergeman

CEO of Bergeman Group, a construction and risk management company that performs safety inspections.

Bergeman says inspections “should generally be done by a consulting firm, architecture or engineering firm that specializes in building repairs and working on existing structures.

“We generally recommend about a 10-year interval,” Bergeman says. “The older the building, the more frequent the inspections should be.”

Premises Liability Explained

Kenneth Kasdan, a Hawaii attorney recently recognized with the Silver Star Award for Best Plaintiff Attorney at the 25th Annual West Coast Casualty Construction Defect Seminar, says Hawaii’s Premises Liability rule states “a possessor of land, who knows or should have known of an unreasonable risk of harm posed to persons using the land ... owes a duty to take reasonable steps to eliminate the reasonable risk, or warn against it.”

Kasdan says key points include:

1. There must be an unreasonable risk of harm.
2. The owner must take reasonable steps to eliminate the risk.
3. There must be warnings to alert of the risk. And if warnings are not sufficient—and they usually are not—then measures implemented to abate the risk to avoid liability.
4. “The issue of whether the owner is on notice is a tricky point, as the issue of whether the owner has, or should be deemed to have, turns on many facts,” Kasdan says. “Was the property properly maintained or not? Did the owner know? Should the owner have known? These all are complex issues of fact. Expert opinions, and more often than not, disagreement among all concerned, abound. When an impasse is reached, a lawsuit is often the result.”