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An Introduction to Premises Liability Based on Criminal Conduct

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You invest in residential real estate and rent a unit in one of your California properties to Ms. Smith. Late one night as Ms. Smith is entering her unit, a rapist attacks her. She survives, but has serious injuries. The rapist is arrested, convicted, and sent to prison.

What civil liability might you, as the property owner, have for Ms. Smith's injuries?

California law provides that Ms. Smith may, under certain circumstances, recover damages for physical injuries she sustains on your residential rental property which are caused by criminal conduct. In order to prevail on her claim against you, Ms. Smith must prove two things: first, that you had a duty to protect her and, second, that your breach of that duty was a legal cause of her injury.

The "duty" element of Ms. Smith's civil cause of action against you addresses whether you were required to take measures to prevent her injury which, in turn, depends on whether Ms. Smith's injury was foreseeable.

The "causation" element addresses whether your failure to take measures to prevent Ms. Smith's injury was a legal cause of that injury.

As a general rule, you have no legal duty to protect Ms. Smith from being assaulted while on she is present at the residence she rents from you. But as with all general rules, there is an exception. You will be deemed to have a legal duty to protect Ms. Smith from being sexually assaulted if the sexual assault is foreseeable. Ann M. v. Pacific Plaza Shopping Center, 6 C.A. 4th 666, 673 (1993).

Whether you owed a legal duty of care to protect Ms. Smith, as in this example, is a question of law for the court to decide. The existence of a legal duty is determined on a case-by-case basis. Delgado v. Trax Bar & Grill, 36 Cal. App. 4th 224, 235 (2005).

When determining the existence and scope of a landlord's duty, a court should consider: (a) foreseeability of the harm, (b) the degree of certainty that injury will be sustained, (c) the nexus between the wrongful conduct and the injury, (d) the moral blame attached to the wrongful conduct, (e) public policy regarding the prevention of harm in future cases, (f) the cost of preventive measures, and (g) the availability and cost of insurance for the particular risk. Castaneda v. Olsher, 41 Cal. App. 4th 1205, 1213 (2007).

Courts typically resolve the question of "duty" by balancing the foreseeability of the harm against the burden of the duty imposed. When the cost of prevention is great, a high degree of foreseeability likely will be required. Alternatively, if there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required. The California Supreme Court has described this process as a "sliding-scale balancing formula". Delgado v. Trax Bar & Grill, 36 Cal. App. 4th at 243.

If the court determines that you, by virtue of your ownership of the property, owed Ms. Smith a duty of care to prevent her from being assaulted, the next question is whether the act or omission which constitutes your breach of duty was a "substantial factor" which contributed to her injury. Saelzler v. Advanced Group 400, 25 C.A. 4th 763 (2001).

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, constitutional and civil rights law, family law, real estate law, tax law, and trusts and estates.

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Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school's Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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