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NAVIGATING HIDDEN RISKS: NUISANCE LAWSUITS IN A CHANGING PROPERTY LANDSCAPE



**Real Estate
and Hospitality**

In today's real estate and hospitality sectors, success is primarily measured by occupancy rates and turnover, and the path to achieving those metrics is evolving. Persistent vacancies, particularly in the commercial sector, along with evolving tenant expectations and the rise of hybrid work models, are prompting property owners and managers to rethink how to use their excess square footage. Traditional leasing strategies are giving way to more flexible, mixed-use approaches designed to attract foot traffic and diversify revenue, such as integrating coffee shops or fitness centers.

However, with innovation comes exposure. These creative adaptations introduce unfamiliar risks: unpredictable foot traffic, shifting liability profiles and regulatory oversights — all raising the specter of nuisance lawsuits.

Understanding and preempting these lawsuits is no longer a “wait-and-see” legal obligation; it's a matter of strategic foresight.

UNDERSTANDING THE RISK: WHAT IS A NUISANCE LAWSUIT?

A nuisance lawsuit is a claim that arises when an individual or entity claims that another party's property use interferes with their own enjoyment of land or public space. Traditionally seen as neighborhood-level disputes, such nuisance lawsuits are increasingly becoming an ongoing source of loss for real estate portfolios and hospitality operators.

Owners and operators of hotels, restaurants and bars are particularly exposed due to high guest interaction combined with complex premises liability. More broadly, nuisance lawsuits span a wide spectrum, covering everything from slip-and-fall incidents, malfunctioning doors and stairway accidents to disputes involving accessibility requirements and environmental compliance.

What is at stake for executives?

Nuisance lawsuits can cause reputational damage, erode brand value and carry substantial financial risk. Whether through litigation, settlements or mandated retrofits, costs can escalate quickly, and there can be substantial periods of business interruption. Insurance may offer a safety net, but carriers weigh up the value of pursuing these claims through strict cost-benefit analysis. A \$25,000 demand might be quietly settled for \$8,000 simply because fighting it could cost twice as much.

However, settling may create a snowball effect, making properties easy targets for repeat claims. As Mike Bugielski, senior risk control consultant, Gallagher, advises, the best approach is early engagement with risk consultants. “Involving risk control during the design phase rather than waiting until a claim has been filed allows us to flag potential nuisance triggers. Sometimes the solution is simply adding signage.”

INNOVATION MEETS RISK: HOW MODERN ENHANCEMENTS ARE CREATING NEW LITIGATION FLASHPOINTS

As real estate and hospitality sectors embrace post-pandemic reinvention, even the most well-intentioned improvements, like EV charging stations or enhanced common-use areas, are reshaping the liability landscape.

Common triggers and patterns of nuisance lawsuits

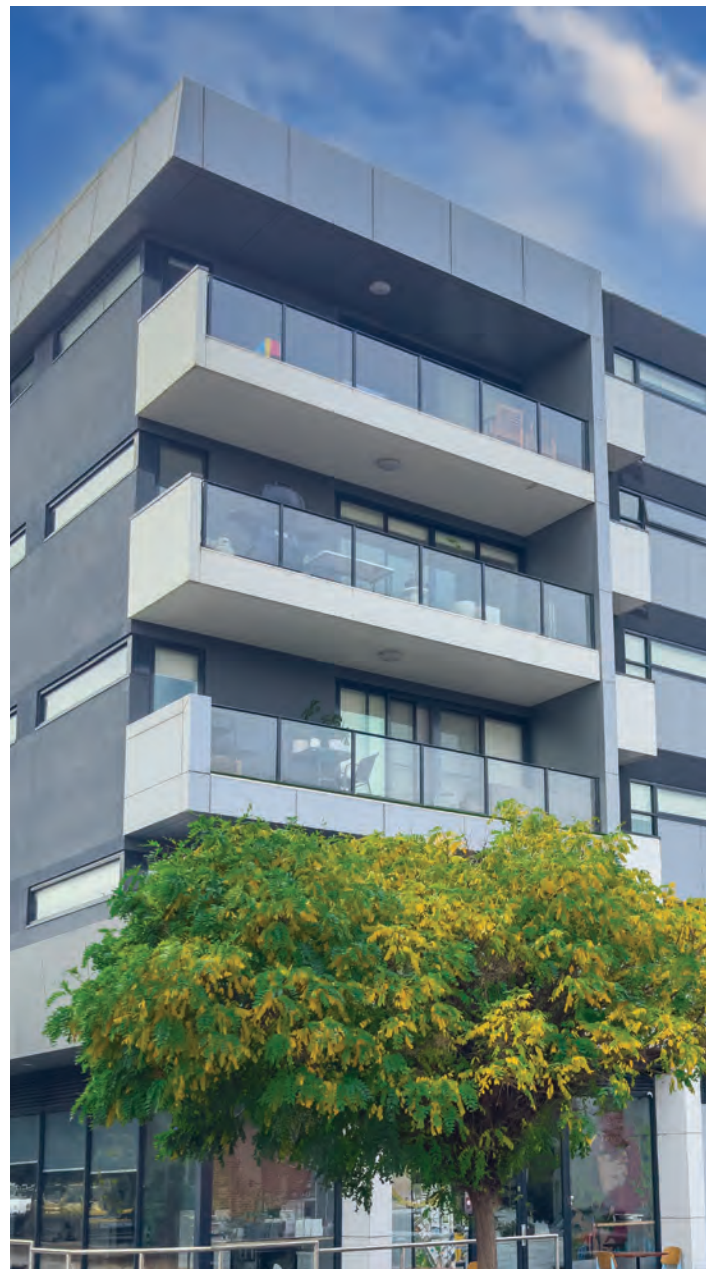
- **Routine hazards:** Slip-and-fall incidents, finger pinches from harsh-closing doors and low-hanging branches remain frequent sources of claims.
- **Accessibility pitfalls:** Accessibility lawsuits are surging, often sparked by mislabeled restrooms, blocked paths or signage that implies compliance, but fails in practice.
- **Micromobility complications:** E-bikes and scooters left in shared spaces increase trip hazards and spark nuisance complaints.
- **Infrastructure dilemmas:** EV chargers can lead to fire hazards, cable-related injuries or disputes over aesthetics and noise.
- **Security assumptions:** Broken surveillance systems, unstaffed access points or inattentive guards can escalate crime, resulting in negligence suits.

Operational nuances, even when guided by good intentions, **may also trigger nuisance lawsuits**, especially due to minor oversights.

Mike Bugielski, senior risk control consultant, Gallagher

“Operational nuances, even when guided by good intentions, may also trigger nuisance lawsuits, especially due to minor oversights,” highlights Bugielski. “We recently advised a client on their ADA parking redesign. Everything looked compliant until we noticed a bike rack near the entrance. When occupied, it blocked the accessible path for wheelchair users — creating grounds for a potential nuisance lawsuit.”

Small design choices, such as unweighted umbrellas, decorative string lights and landscaping fixtures, may become litigation triggers, reinforcing the need for comprehensive risk reviews and assessments beyond visual appeal.



MINIMIZING LIABILITY EXPOSURE: YOUR PLAYBOOK TO PREVENT NUISANCE LAWSUITS

For real estate and hospitality leaders, effective oversight demands shifting from reactive damage control to proactive risk management. And having a safety program isn't enough — you need to make sure to adhere to it.

Key strategies

- **Monitor early indicators and nonlitigious complaints:** Guest reviews, municipal inquiries and tenant complaints often foreshadow formal claims. Failure to address recurring concerns, despite prior notice, may be construed as negligence.
- **Stay ahead of regulations:** Track zoning revisions, accessibility standards and local ordinances, particularly those affecting mixed-use developments, short-term rentals and hospitality properties.
- **Institutionalize smart fixes:** Standardize documentation and prioritize low-cost improvements like signage and sidewalk leveling. Additionally, secure idle spaces to prevent misuse.
- **Elevate vendor accountability:** Ensure contractors and service providers understand nuisance-related expectations and include clauses on noise, waste and hours of operation in contracts.
- **Embed risk into planning:** Treat nuisance exposure as a formal input into capital planning and community engagement. Evaluate modifications through legal, environmental and reputational lenses.
- **Ensure operational alignment with peers:** Maintain consistency with industry norms to reduce nuisance liability. While exceeding standards may offer advantages, unfulfilled commitments risk legal and reputational harm. Match neighboring operations — never falling short, but exercise discretion when extending beyond prevailing norms.

The role of insurers and brokers in a strategic risk partnership

Insurance is more than a tool for transferring nuisance lawsuit risk; it's a strategic extension of the risk governance team. Engaging your insurance broker early and leveraging insurer-provided resources offers key benefits, including coverage optimization, insights into emerging litigation trends and access to training and audit resources tailored to your property profile.

Gallagher brings global expertise with a local touch. For real estate and hospitality leaders, partnering with a risk-savvy insurance broker means:

- Tailored coverage aligned with modern nuisance exposures
- Proactive risk mitigation through audits, checklists and training
- Strategic guidance for geographically diverse or mixed-use assets

Bugielski explains, "I always encourage clients to sign up for the Gallagher Subscription Center. It's a valuable resource — offering complimentary training — that's often overlooked. The STEP program offers fresh, sector-specific materials for real estate and hospitality, and once enrolled, clients receive them automatically. It's one of those 'aha' moments that can make a real difference in how teams manage risk."



