For: LeClairRyan, Richmond, Va.
From: Parness & Associates, Aberdeen, N.J.

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Recent Va. High Court Slip-and-Fall Decision Impacts
Landlord, Community Association Responsibilities, Says LeClairRyan Attorney
--However, Haynes-Garrett v. Dunn win may not be a shield, Brett Herbert cautions

RICHMOND, Va. (12/4/18)— At first glance, a recent Virginia Supreme Court decision that the owner and management company of a beach house weren't responsible for a short-term renter's slip-and-fall appears to be a win for landlords and community associations who rent out units and common areas for brief periods, notes Brett Herbert, an associate in national law firm LeClairRyan's Richmond and Williamsburg offices. "But in the era of Airbnb — where more than 2 million people a night reportedly book accommodations on that platform alone — the legal landscape surrounding short-term rentals is rapidly changing. This adds to the unique legal challenges community associations and their owners face with short-term rentals," he warns.

The case of Haynes-Garrett v. Dunn (Record No. 171055) involved a unique set of facts – a beach house, non-resident owners, and a management company. However, the legal principles set forth potentially apply in other short-term rental tort lawsuits with different scenarios, Herbert wrote in a post, *Tort Liability and Short-Term Rentals: What Owners and Community Associations Should Know*, which appears in the firm's *Virginia Community Association Law* blog.

The facts in the case are relatively straightforward, according to Herbert, who is a member of the firm's Community Associations (HOA, Condo & Development) Team. June Haynes-Garrett, the renter, sued beach house owners Drew and Cynthia Dunn and management company Sandbridge Properties, Inc., d/b/a Siebert Realty, after she tripped over a transition strip, or "lip," between the residence's carpeted floor and the raised ceramic tiling in a hallway.

The Dunns asserted that as landlords, in the absence of fraud or concealment, they owed no duty of care to maintain or repair the premises. Further, they argued there was no duty to warn of a dangerous condition on the premises that was open and obvious or discoverable by Haynes-Garrett upon making a reasonable inspection. The management company asserted that it was not a landlord, had no relationship with Haynes-Garrett, and owed no duty of care to her with regard to the condition of the property.

The plaintiff argued that that the Dunns owed her the higher standard of duty that an innkeeper owes its guest, and the management company owed "a duty to the people who come within its sphere of conduct" and also a duty of care as part of a "joint endeavor" with the Dunns, according to the filing.

The circuit court granted the defendants' motion to strike on the grounds they argued, and entered judgment in their favor. On appeal — which dropped the management company from the case — the Supreme Court upheld the lower court ruling, noting that the distinction between the landlord-tenant relationship and the higher duty of care required under an innkeeper-guest relationship "is based upon the extent to which the owner of the premises maintains possession of and control over the premises during its occupancy."

In this instance, the owners were located a considerable distance away in Northern Virginia. "Unlike a landlord, an innkeeper is in direct and continued control of the property and usually maintains a presence on the property personally or through agents," according to the Supreme Court.

Although the Supreme Court ultimately held that the lesser "landlord" duties applied in this scenario, "it is easy to imagine a situation where in other short-term rentals situations, the higher 'innkeeper' duties would apply," Herbert cautions. "Specifically, the higher 'innkeeper' duties may apply if an owner is renting out a room and remains on site; if the owner offers to provide food or daily cleaning services to the guest, or if the owner comes by the premises to check in on occasion."

Additionally, given the potential of accidents occurring on the common element or common area of a multifamily development, "if an owner fails to maintain adequate insurance coverage, community associations may find themselves being sued as well by guests claiming injuries. Community associations ought to consult with their legal counsel and other professionals to analyze their risks, develop strategies to minimize such risks, and potentially consider modifying their governing documents and insurance coverages," Herbert advises.

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