



INSITES

New England Assisted Housing Management Association

Summer 1996



LEGAL EASE APARTMENT WINDOWS: LOOK BUT DON'T FALL

BY: KEN KREMS ESQ.,
SHAEVEL & KREMS

It happens every summer. You pick up the paper or turn on the news and learn that another child has been seriously injured or killed as a result of a fall from an upper story apartment window. Another tragedy that could have been prevented. Another potential major lawsuit against a landlord.

In a mill town a small boy

falls out a window into a neighboring canal. Only the heroic efforts of office workers on the other side of the canal prevented him from drowning. A small girl falls out an upper story window to the pavement below and is killed. Do you worry that this could happen someday at your property?

Generally, if an owner or manager of an apartment building knows that a potentially dangerous situation exists, but does not take reasonable steps to make the premises safe, there can be liability for a future injury. A child falling from a window is such a potentially dangerous event. Because juries know that these types of injuries occur with some frequency, they are delivering large verdicts against landlords who have not taken adequate precautions to insure that these falls will not occur.

One recent case involved a four year old girl who fell out of her fifth floor bedroom window. She had opened the

window, pushed on the screen and fell. The girl had been blind since birth, and more than a year prior to the accident a supervisor from the Perkins School for the Blind had written to the landlord requesting that additional measures be taken to protect her in the apartment. The landlord could have had inexpensive window guards properly installed in the unit's windows to allow the windows to be opened a few inches but no more, or safety screens could have been installed. The window guards that were on the windows had been improperly positioned, so they did not prevent a fall from occurring.

The child's family sued the owner and manager for breach of the implied warranty of habitability, alleging that they had not provided a safe living environment for her. The defendants' argument was that they could not be liable because the state sanitary code did not require special window

locks or guards. The defendants must have realized that their argument was weak, because on the first day of the trial the case was settled for two million dollars.

It is important that managers inventory their properties to make sure that they will not be defendants in this type of case in the future. Do the windows have working locks and properly installed window guards? The guards, which cost around \$10.00, can both prevent children from falling and help deter burglaries. Safety window screens are another alternative.

These days tenants know their rights, and plaintiff's attorneys are eager to sue landlords. Do what you have to do to make sure that you don't get a call one day that a child has fallen out of one of your windows.