

NO. 36510-3-II
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

FILED
BY: *[Signature]*

**CHRISTOPHER NEELY; STEFANI NEELY; and JEFFREY L. JACOBS, as
Guardian ad Litem for MAKENNA D. NEELY, a minor,**

Respondents,

vs.

**THE REID COMPANY, LLC; MARK W. VUKANOVICH and KRISTINA M.
VUKANOVICH, husband and wife,**

Appellants.

**THE REID COMPANY, LLC; MARK W. VUKANOVICH and KRISTINA M.
VUKANOVICH, husband and wife,**

Third-Party Plaintiffs,

vs.

**HAYDEN ENTERPRISES, INC., a Washington corporation; HLM, INC., an
Oregon corporation; BARRY R. SMITH, P.C., ARCHITECT, an Oregon
professional corporation; and MILGARD MANUFACTURING, INC., a
Washington corporation,**

Third-Party Defendants.

**APPEAL FROM CLARK COUNTY SUPERIOR COURT
Honorable Diane Woolard, Judge**

BRIEF OF APPELLANTS

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I. NATURE OF THE CASE

Plaintiff's minor daughter fell out of a window from the second story of their rented apartment. Plaintiff sued the landlord, claiming the window was too low, a condition indisputably open and obvious. But "a landlord generally is not liable to a tenant for personal injuries caused by a defective condition in the premises," particularly when they are open and obvious. *Sjogren v. Properties of Pacific Northwest, LLC*, 118 Wn. App. 144, 148-49, 75 P.3d 592 (2003); *Brown v. Hauge*, 105 Wn. App. 800, 804, 21 P.3d 716 (2001).

In an attempt to circumvent these general rules, plaintiff claims building code provisions applicable to balconies, porches and other raised walking surfaces required the window to have a guard rail. Commissioner Skerlec, finding that the trial court's denial of summary judgment to the landlord was obvious error, granted discretionary review.

II. ASSIGNMENTS OF ERROR

The trial court erred in denying defendants/appellants' summary judgment motion.

III. ISSUES PRESENTED

A. If this court were to adopt RESTATEMENT (SECOND) OF PROPERTY § 17.6, does that section, by its terms, apply here where the allegedly defective window did not violate—

1. any statute or administrative regulation, or
2. the implied warrant of habitability?

B. If the answer to A.1 or A.2 is “yes”, should this court overturn its previous decisions declining to adopt RESTATEMENT (SECOND) OF PROPERTY § 17.6?

C. Is a landlord who leased an apartment with an allegedly defective window a “possessor of land” within the meaning of the RESTATEMENT (SECOND) OF TORTS § 343A, when the accident occurred while the tenants were occupying the apartment with the intent to control it?

A. STATEMENT OF RELEVANT FACTS.

Appellants/defendants Mark and Kristina Vukanovich own a duplex in Camas, Washington. Appellant/defendant The Reid Company, LLC, manages the property. (CP 14) For purposes of this appeal, appellants will be referred to collectively as “the landlord.”

On August 18, 2004, respondent/plaintiff Stefani Neely rented a unit in the duplex. On August 21, 2004, shortly after Neely and her family moved in, her daughter, Makenna Neely, fell out an open window from the second story of the unit. The window was approximately 71” by 71”; its sill was located roughly 11” above the floor. One of the panes slides to

create an opening of approximately 35". (CP 15) A photo of the window is included in the Appendix hereto. (CP 36)

B. STATEMENT OF PROCEDURE.

Plaintiffs sued the Vukanoviches and the property manager. (1-5) Defendants moved for summary judgment. (CP 12-13, 14-22, 23-48) The trial court denied the motion. (CP 116-18) Commissioner Skerlec granted defendants discretionary review, finding that the trial court had committed obvious error that rendered further proceedings useless.

IV. ARGUMENT

This is an appeal from the denial of a summary judgment motion. Consequently, this court will review *de novo*. *Heg v. Alldredge*, 157 Wn.2d 154, 160, 137 P.3d 9 (2006).

Under this state's common law, "a landlord generally is not liable to a tenant for personal injuries caused by a defective condition in the premises." *Brown v. Hauge*, 105 Wn. App. 800, 804, 21 P.3d 716 (2001). Indeed, a landlord has no duty to protect a tenant from dangers that are open and obvious. *Sjogren v. Properties of Pacific Northwest, LLC*, 118 Wn. App. 144, 148-49, 75 P.3d 592 (2003). There is no dispute that if the window was defective, the defect was open and obvious.

Nevertheless, plaintiffs claim the landlord here could be liable under the RESTATEMENT (SECOND) OF PROPERTY § 17.6 and/or

RESTATEMENT (SECOND) OF TORTS § 343A. By agreeing with plaintiffs that one or both of these sections might apply in this case, the trial court committed an error of law that requires reversal.

A. SECTION 17.6 DOES NOT APPLY.

Plaintiffs claim that the landlord is liable under RESTATEMENT (SECOND) OF PROPERTY § 17.6. This court has thus far declined to adopt this as law. *Pruitt v. Savage*, 128 Wn. App. 327, 115 P.3d 1000 (2005); *Sjogren v. Properties of Pacific Northwest, LLC*, 118 Wn. App. 144, 75 P.3d 592 (2003). But even if this court were to adopt section 17.6, the section, by its terms, does not apply in this case.

1. Section 17.6 Does Not Apply to This Case.

Section 17.6 provides:

A landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of:

- (1) an implied warranty of habitability; or
- (2) a duty created by statute or administrative regulation.

a. There Was No Building Code Violation.

Plaintiffs' principal argument below was premised on section 17.6(2): that the window at issue was in violation of the International

Building Code and the International Residential Code, both of which were adopted in Camas pursuant to RCW 19.27.031, WAC tit. 51, ch. 51-50, and Camas Municipal Code § 15.04.010.

Specifically, plaintiffs claimed violation of IBC 1012.1 and IRC R312. IBC 1012.1 and IBC 1012.2, which are part of Section 1012 entitled “Guards”, provide:¹

IBC 1012.1:

Where required. Guards shall be located along open-sided walking surfaces, mezzanines, industrial equipment platforms, stairways, ramps and landings which are located more than 30 inches (762 mm) above the floor or grade below. Guards shall be adequate in strength and attachment in accordance with Section 1607.7. Guards shall also be located along glazed sides of stairways, ramps and landings that are located more than 30 inches (762 mm) above the floor or grade below where the glazing provided does not meet the strength and attachment requirements in Section 1607.7.

IBC 1012.2:

Height. Guards shall form a protective barrier not less than 42 inches (1067 mm) high, measured vertically above the leading edge of the tread, adjacent walking surface or adjacent seatboard.

Exceptions:

1. For occupancies in Group R-3, and within individual dwelling units in occupancies in Group R-2, both as applicable in Section 101.2, guards

¹ Copies of the referenced building codes are set forth in the Appendix hereto.

whose top rail also serves as a handrail shall have a height not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from the leading edge of the stair tread nosing.

....

IRC R312.1 provides:

Guards required. Porches, balconies or raised floor surfaces located more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 36 inches (914 mm) in height. Open sides of stairs with a total rise of more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 34 inches (864 mm) in height measured vertically from the nosing of the treads. . . .

In the trial court, plaintiffs claimed:

the second floor at this duplex was a walking surface that was “open-sided” when the window was open and was approximately 10 feet above the ground, so according to the plain meaning of the English language, it was both a “raised floor surface” and an “open-sided walking surface.”

(CP 87) This borders on the frivolous.

Under plaintiffs’ approach, *every* floor of a residential building—even a first floor—that is 30 inches above the floor or grade, would have to have 34” guards installed at the windows. Under plaintiffs’ approach, *every* floor of a nonresidential building with “openable” windows—even a first floor—that is 30 inches above the floor or grade, would have to have 42” (or possibly 34”) guards installed at the windows. Both of these interpretations defy the plain language of the building codes, not to mention common sense. *Cf. Bennett v. Real Property Services Corp.*, 66

F. Supp. 2d 607 (1999) (access hole to crawl space not “walking surface” or “open sided walking surface”).

That the building code sections upon which plaintiffs rely do not apply here is further demonstrated by amendments to the building code that were adopted in Washington, effective July 1, 2007, nearly three years *after* the August 2004 accident. These new amendments, copies of which are set forth in the Appendix, expressly regulate window sills as follows:

IBC 1405.12.2:

Window sills. In Occupancy Groups R-2 and R-3, one- and two-family and multiple-family dwellings, where the opening of the sill portion of an operable window is located more than 72 inches (1829 mm) above the finished grade or other surface below, the lowest part of the clear opening of the window shall be a minimum of 24 inches (610 mm) above the finished floor surface of the room in which the window is located. Glazing between the floor and a height of 24 inches (610 mm) shall be fixed or have openings such that a 4-inch (102 mm) diameter sphere cannot pass through.

IRC R613.2:

Window sills. In dwelling units, where the opening of an operable window is located more than 72 inches (1829 mm) above the finished grade or surface below, the lowest part of the clear opening of the window shall be a minimum of 24 inches (610 mm) above the finished floor of the room in which the window is located. Glazing between the floor and 24 inches (610 mm) shall be fixed or have openings through which a 4-inch-diameter (102 mm) sphere cannot pass.

Exceptions:

1. Windows whose openings will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening when the opening is in its largest opened position.
2. Openings that are provided with window guards that comply with ASTM F 2006 or F 2090.

If the code sections on which plaintiffs rely (IBC 1012.1 and IRC R312) applied to windows, there would have been no need for the new amendments.

b. There Was No Breach of the Implied Warranty of Habitability.

Under section 17.6(1) of the RESTATEMENT (SECOND) OF PROPERTY, violation of the implied warranty of habitability can lead to landlord liability under certain circumstances. In the trial court, the landlord's motion for summary judgment anticipated that plaintiffs might claim that section 17.6(1) applied and explained why it did not. (CP 17-21) Plaintiffs, however, never specifically claimed that section 17.6(1) applied. The only time they mentioned the implied warranty of habitability was in discussing case law; they never claimed that that implied warranty was actually breached in the instant case nor if it was breached, explained how the breach occurred. (CP 89)

Thus, by not responding to the summary judgment motion on this issue, plaintiffs essentially conceded that there was no breach of the implied warranty of habitability. Therefore, this court should not even

reach the issue. If, however, this court is inclined to decide whether section 17.6(2) applies, the result must be the same—no liability on the part of the landlord as a matter of law—because the fact that the window was allegedly too low did not breach the implied warranty of habitability.

In a residential landlord-tenant situation, the implied warranty of habitability is limited to the duties specified in RCW 59.18.060(1)-(11). *Aspon v. Loomis*, 62 Wn. App. 818, 825, 816 P.2d 751 (1991), *rev. denied*, 118 Wn.2d 1015 (1992). The only potentially relevant sections of RCW 59.18.060 require landlords to:

- (1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

...

- (5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

As discussed *supra*, the window here did not violate the building code, so there was no violation of RCW 59.18.060(1).

There was no violation of RCW 59.18.060(5) either, even assuming this provision applies to a window claimed to be defective

merely because it was installed 11 inches from the floor. Plaintiffs have never contended that the rental agreement required defendants to change the height of the window. And as discussed *supra*, the building code provisions they cite do not apply, so there was no law requiring that the window height be changed.

In any event, even if the implied warranty of habitability in a residential landlord-tenant context were not limited to the duties specified in RCW 59.18.060(1)-(11), the result would be the same—no breach. The implied warranty of habitability applies only to “defects which profoundly compromise the essential nature of the subject property *as a dwelling*.” *Stuart v. Coldwell Banker Commercial Group, Inc.*, 109 Wn.2d 406, 416, 745 P.2d 1284 (1987) (emphasis added). Although the dwelling need not be rendered uninhabitable, the defects must be egregious. *Id.* at 415-16.

Thus, for example, the warranty does not apply to buckling and sinking of patio slabs. *Klos v. Gockel*, 87 Wn.2d 567, 571-72, 554 P.2d 1349 (1976). Nor does it apply to condominium unit decks substantially impaired by rot. *Stuart*, 109 Wn.2d at 417.

Any defect here in the placement of the window did not “profoundly compromise the essential nature of the subject property *as a dwelling*.” *Stuart*, 109 Wn.2d at 416 (emphasis added). Therefore, there

was no breach of the implied warranty of habitability even if that warranty were not limited to the duties set forth in RCW 59.18.060(1)-(11).

2. Section 17.6 Should Not Be Adopted.

If this court decides, as it should, that section 17.6 does not apply here, it need go no further with respect to that section. If, however, this court decides that section 17.6 might apply here, it must then decide whether to overturn its prior decisions declining to adopt that section in the first place. *Pruitt v. Savage*, 128 Wn. App. 327, 115 P.3d 1000 (2005); *Sjogren v. Properties of Pacific Northwest, LLC*, 118 Wn. App. 144, 75 P.3d 592 (2003).

To the best of the undersigned's knowledge, in this state only Division III has adopted section 17.6. *See Lian v. Stalick*, 106 Wn. App. 811, 25 P.3d 467 (2001). Plaintiffs here seek to apply that provision to a window in their rented apartment, a noncommon area.

Division I, however, has correctly observed that in enacting the Residential Landlord-Tenant Act, RCW ch. 59.18, the Legislature did not intend to impose on landlords a general duty to repair defects in noncommon areas:

RCW 59.18.060(3) provides that landlords must keep *common areas* "reasonably clean, sanitary, and safe from defects." However, *there is no provision creating a similar duty with respect to noncommon areas.*

Aspon, 62 Wn. App. at 827 (boldface emphasis added). Indeed, under the common law, a landlord had “no duty to repair noncommon areas absent an express covenant to repair.” *Id.* at 826.

“[T]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating.” *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994). If it had wanted to change the common law that absent a written agreement, a landlord has no duty to repair noncommon areas, it easily could have done so. It did not.

Furthermore, the Washington Supreme Court has recognized that “the respective rights and duties of residential tenants and landlords are spelled out in great detail, and an array of specific remedies provided for violations thereof, in a single comprehensive enactment, the Residential Landlord-Tenant Act of 1973, RCW 59.18.” *State v. Schwab*, 103 Wn.2d 542, 550, 693 P.2d 108 (1985); *see also Aspon*, 62 Wn. App. at 825. In view of the Act’s comprehensiveness, the Legislature’s not changing the common law in this regard must be deemed a decision to leave the common law as it is.

B. SECTION 343A DOES NOT APPLY.

Plaintiffs also sought to defeat summary judgment by claiming that section 343A of the RESTATEMENT (SECOND) OF TORTS applied. That section provides:

A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

But by its terms, section 343A does not apply if the defendant is not a “possessor of land.” As will be discussed, defendants here could not be “possessors of land” as a matter of law.

Section 328E of the RESTATEMENT defines “possessor of land” to mean:

(a) a person who is in occupation of the land with intent to control it or

(b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or

(c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

Here, there can be no dispute that plaintiffs were in occupation of the leased premises with intent to control it. Under the specific terms of the rental agreement, their right to possession began on August 19. (CP 103) The premises they rented included the window at issue. The accident occurred on August 21. (CP 4)

The landlord-tenant relationship is triggered when exclusive control of the premises passes to the tenant. *See Sunde v. Tollett*, 2 Wn. App. 640, 642, 469 P.2d 212 (1970). At that point, the landlord’s liability

is no longer governed by theories applicable to the occupier of the land; rather, the landlord's liability is based on its status as landlord. *Id.* Thus, the landlord here was no longer a possessor of the "land" in question, *i.e.*, the demised premises. *See Gildon v. Simon Property Group, Inc.*, 158 Wn.2d 483, 496, 145 P.3d 1196 (2006) ("possessor of land" need not be true owner). Section 343A does not apply.

This court has already ruled that a Restatement section similar to section 343A does not apply to a landlord who is being sued for a defect in the leased premises. In *Pruitt v. Savage*, 128 Wn. App. 327, 115 P.3d 1000 (2005), plaintiff was injured when a garage door at the leased premises came down on top of him. He sued the landlords. The garage door was part of the demised premises and not a common area. This court ruled that neither the landlord nor the property manager was a "possessor of land" within the meaning of section 343 of the Restatement:

By its terms, this section applies only to one who is a "possessor of land." As landlords, the Savages [the landlords] could enter only if the Jacksons [the tenants] gave permission. The same was true for their property manager The Jacksons [the tenants], not the Savages or McMenamin's [the landlords and property manager], were the possessors of the home in issue here.

128 Wn. App. at 331. The court further stated that "by definition a landlord is not the 'possessor' of noncommon areas." *Id.*

As were the landlords in *Pruitt*, the landlord here could not have possibly been a “possessor of land” within the meaning of section 343A, since exclusive control of the premises had already passed to plaintiffs. Therefore, section 343A does not apply. To the extent, if any, the trial court’s denial of summary judgment was based on the belief that section 343A might apply, the trial court committed an error of law.

V. CONCLUSION

Commissioner Skerlec was right when she found that the trial court had committed obvious error. But even if the trial court’s denial of summary judgment was not *obviously* erroneous, it was still erroneous.

The landlord here simply breached no duty that resulted in plaintiffs’ harm.. This court should reverse and remand for entry of summary judgment in favor of defendants.

DATED this 3rd day of December, 2007.

REED McCLURE

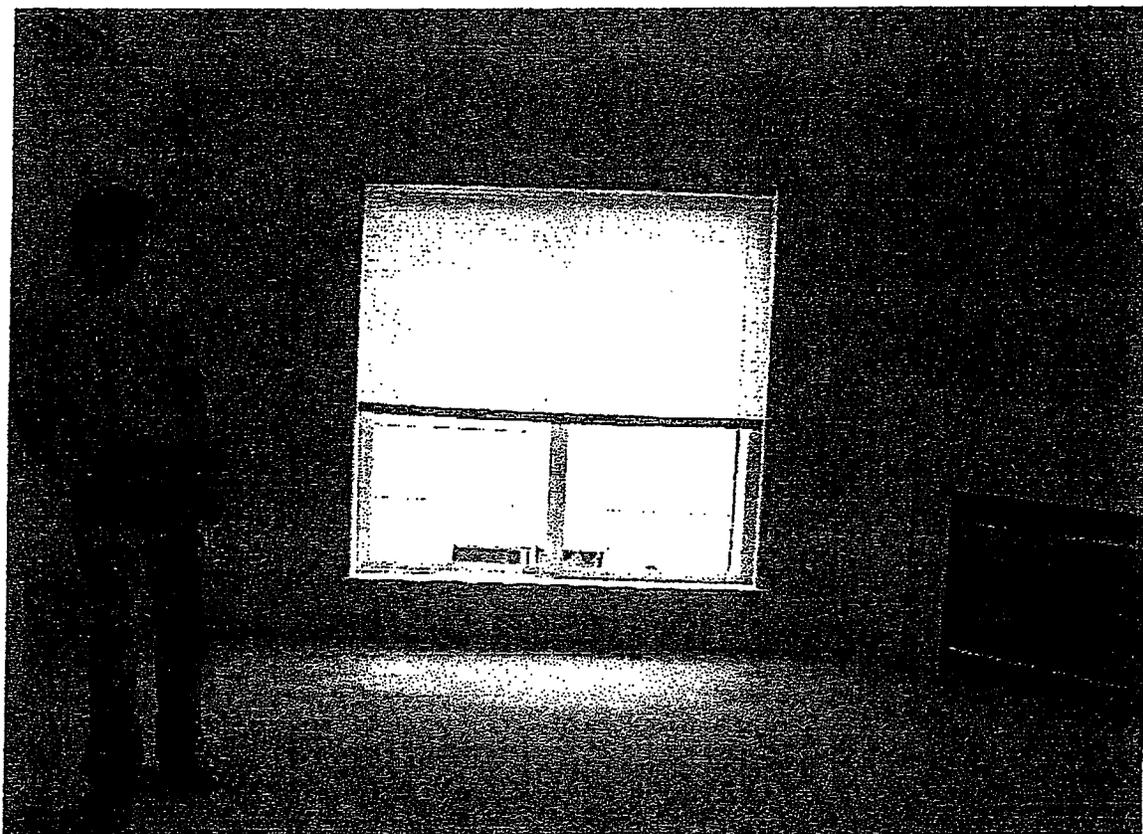
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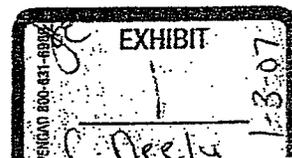


APPENDIX A

EXHIBIT

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vomitory or opening within the seating area in an emergency.

1011.2 Illumination. Exit signs shall be internally or externally illuminated.

Exception: Tactile signs required by Section 1011.3 need not be provided with illumination.

1011.3 Tactile exit signs. A tactile sign stating EXIT and complying with ICC A117.1 shall be provided adjacent to each door to an egress stairway, an exit passageway and the exit discharge.

1011.4 Internally illuminated exit signs. Internally illuminated exit signs shall be listed and labeled and shall be installed in accordance with the manufacturer's instructions and Section 2702. Exit signs shall be illuminated at all times.

1011.5 Externally illuminated exit signs. Externally illuminated exit signs shall comply with Sections 1011.5.1 through 1011.5.3.

1011.5.1 Graphics. Every exit sign and directional exit sign shall have plainly legible letters not less than 6 inches (152 mm) high with the principal strokes of the letters not less than 0.75 inch (19.1 mm) wide. The word "EXIT" shall have letters having a width not less than 2 inches (51 mm) wide except the letter "I," and the minimum spacing between letters shall not be less than 0.375 inch (9.5 mm). Signs larger than the minimum established in this section shall have letter widths, strokes and spacing in proportion to their height.

The word "EXIT" shall be in high contrast with the background and shall be clearly discernible when the exit sign illumination means is or is not energized. If an arrow is provided as part of the exit sign, the construction shall be such that the arrow direction cannot be readily changed.

1011.5.2 Exit sign illumination. The face of an exit sign illuminated from an external source shall have an intensity of not less than 5 foot-candles (54 lux).

1011.5.3 Power source. Exit signs shall be illuminated at all times. To ensure continued illumination for a duration of not less than 90 minutes in case of primary power loss, the sign illumination means shall be connected to an emergency power system provided from storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Section 2702.

Exception: Approved exit sign illumination means that provide continuous illumination independent of external power sources for a duration of not less than 90 minutes, in case of primary power loss, are not required to be connected to an emergency electrical system.

SECTION 1012 GUARDS

1012.1 Where required. Guards shall be located along open-sided walking surfaces, mezzanines, industrial equipment platforms, stairways, ramps and landings which are located more than 30 inches (762 mm) above the floor or grade below. Guards shall be adequate in strength and attachment in accordance with Section 1607.7. Guards shall also be located

along glazed sides of stairways, ramps and landings that are located more than 30 inches (762 mm) above the floor or grade below where the glazing provided does not meet the strength and attachment requirements in Section 1607.7.

Exception: Guards are not required for the following locations:

1. On the loading side of loading docks or piers.
2. On the audience side of stages and raised platforms, including steps leading up to the stage and raised platforms.
3. On raised stage and platform floor areas such as runways, ramps and side stages used for entertainment or presentations.
4. At vertical openings in the performance area of stages and platforms.
5. At elevated walking surfaces appurtenant to stages and platforms for access to and utilization of special lighting or equipment.
6. Along vehicle service pits not accessible to the public.
7. In assembly seating where guards in accordance with Section 1024.14 are permitted and provided.

1012.2 Height. Guards shall form a protective barrier not less than 42 inches (1067 mm) high, measured vertically above the leading edge of the tread, adjacent walking surface or adjacent seatboard.

Exceptions:

1. For occupancies in Group R-3, and within individual dwelling units in occupancies in Group R-2, both as applicable in Section 101.2, guards whose top rail also serves as a handrail shall have a height not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from the leading edge of the stair tread nosing.
2. The height in assembly seating areas shall be in accordance with Section 1024.14.

1012.3 Opening limitations. Open guards shall have balusters or ornamental patterns such that a 4-inch-diameter (102 mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm). From a height of 34 inches (864 mm) to 42 inches (1067 mm) above the adjacent walking surfaces, a sphere 8 inches (203 mm) in diameter shall not pass.

Exceptions:

1. The triangular openings formed by the riser, tread and bottom rail at the open side of a stairway shall be of a maximum size such that a sphere of 6 inches (152 mm) in diameter cannot pass through the opening.
2. At elevated walking surfaces for access to and use of electrical, mechanical or plumbing systems or equipment, guards shall have balusters or be of solid materials such that a sphere with a diameter of 21 inches (533 mm) cannot pass through any opening.
3. In areas which are not open to the public within occupancies in Group I-3, F, H or S, balusters, horizontal intermediate rails or other construction shall not per-

mit a sphere with a diameter of 21 inches (533 mm) to pass through any opening.

4. In assembly seating areas, guards at the end of aisles where they terminate at a fascia of boxes, balconies and galleries shall have balusters or ornamental patterns such that a 4-inch-diameter (102 mm) sphere cannot pass through any opening up to a height of 26 inches (660 mm). From a height of 26 inches (660 mm) to 42 inches (1067 mm) above the adjacent walking surfaces, a sphere 8 inches (203 mm) in diameter shall not pass.

1012.4 Screen porches. Porches and decks which are enclosed with insect screening shall be provided with guards where the walking surface is located more than 30 inches (762 mm) above the floor or grade below.

1012.5 Mechanical equipment. Guards shall be provided where appliances, equipment, fans or other components that require service are located within 10 feet (3048 mm) of a roof edge or open side of a walking surface and such edge or open side is located more than 30 inches (762 mm) above the floor, roof or grade below. The guard shall be constructed so as to prevent the passage of a 21-inch-diameter (533 mm) sphere.

SECTION 1013 EXIT ACCESS

1013.1 General. The exit access arrangement shall comply with Sections 1013 through 1016 and the applicable provisions of Sections 1003 through 1012.

1013.2 Egress through intervening spaces. Egress from a room or space shall not pass through adjoining or intervening rooms or areas, except where such adjoining rooms or areas are accessory to the area served; are not a high-hazard occupancy and provide a discernible path of egress travel to an exit. Egress shall not pass through kitchens, storage rooms, closets or spaces used for similar purposes. An exit access shall not pass through a room that can be locked to prevent egress. Means of egress from dwelling units or sleeping areas shall not lead through other sleeping areas, toilet rooms or bath-rooms.

Exceptions:

1. Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or sleeping unit.
2. Means of egress are not prohibited through adjoining or intervening rooms or spaces in a Group H occupancy when the adjoining or intervening rooms or spaces are the same or a lesser hazard occupancy group.

1013.2.1 Multiple tenants. Where more than one tenant occupies any one floor of a building or structure, each tenant space, dwelling unit and sleeping unit shall be provided with access to the required exits without passing through adjacent tenant spaces, dwelling units and sleeping units.

1013.2.2 Group I-2. Habitable rooms or suites in Group I-2 occupancies shall have an exit access door leading directly to an exit access corridor.

Exceptions:

1. Rooms with exit doors opening directly to the outside at ground level.
2. Patient sleeping rooms are permitted to have one intervening room if the intervening room is not used as an exit access for more than eight patient beds.
3. Special nursing suites are permitted to have one intervening room where the arrangement allows for direct and constant visual supervision by nursing personnel.
4. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite to the exit access door is not greater than 100 feet (30 480 mm) and are permitted to have two intervening rooms where the travel distance within the suite to the exit access door is not greater than 50 feet (15 240 mm).

Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²). Suites of rooms, other than patient sleeping rooms, shall not exceed 10,000 square feet (929 m²). Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other. Any room or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two access doors remotely located from each other. The travel distance between any point in a Group I-2 occupancy and an exit access door in the room shall not exceed 50 feet (15 240 mm). The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30 480 mm).

1013.3 Common path of egress travel. In occupancies other than Groups H-1, H-2 and H-3, the common path of egress travel shall not exceed 75 feet (22 860 mm). In occupancies in Groups H-1, H-2, and H-3, the common path of egress travel shall not exceed 25 feet (7620 mm).

Exceptions:

1. The length of a common path of egress travel in an occupancy in Groups B, F and S shall not be more than 100 feet (30 480 mm), provided that the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.
2. Where a tenant space in an occupancy in Groups B, S and U has an occupant load of not more than 30, the length of a common path of egress travel shall not be more than 100 feet (30 480 mm).
3. The length of a common path of egress travel in occupancies in Group I-3 shall not be more than 100 feet (30 480 mm).

1013.4 Aisles. Aisles serving as a portion of the exit access in the means of egress system shall comply with the requirements of this section. Aisles shall be provided from all occupied portions of the exit access which contain seats, tables, furnishings, displays and similar fixtures or equipment. Aisles serving assembly areas, other than seating at tables, shall comply with

R311.5.6.3 Handrail grip size. All required handrails shall be of one of the following types or provide equivalent graspability.

1. Type I. Handrails with a circular cross section shall have an outside diameter of at least $1\frac{1}{4}$ inches (32 mm) and not greater than 2 inches (51 mm). If the handrail is not circular it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than $6\frac{1}{4}$ inches (160 mm) with a maximum cross section of dimension of $2\frac{1}{4}$ inches (57 mm).
2. Type II. Handrails with a perimeter greater than $6\frac{1}{4}$ inches (160 mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of $\frac{3}{4}$ inch (19 mm) measured vertically from the tallest portion of the profile and achieve a depth of at least $\frac{5}{16}$ inch (8 mm) within $\frac{7}{8}$ inch (22 mm) below the widest portion of the profile. This required depth shall continue for at least $\frac{3}{8}$ inch (10 mm) to a level that is not less than $1\frac{3}{4}$ inches (45 mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be $1\frac{1}{4}$ inches (32 mm) to a maximum of $2\frac{3}{4}$ inches (70 mm). Edges shall have a minimum radius of 0.01 inches (0.25 mm).

R311.5.7 Illumination. All stairs shall be provided with illumination in accordance with Section R303.6.

R311.5.8 Special stairways. Circular stairways, spiral stairways, winders and bulkhead enclosure stairways shall comply with all requirements of Section R311.5 except as specified below.

R311.5.8.1 Spiral stairways. Spiral stairways are permitted, provided the minimum width shall be 26 inches (660 mm) with each tread having a $7\frac{1}{2}$ inches (190 mm) minimum tread depth at 12 inches from the narrower edge. All treads shall be identical, and the rise shall be no more than $9\frac{1}{2}$ inches (241 mm). A minimum headroom of 6 feet 6 inches (1982 mm) shall be provided.

R311.5.8.2 Bulkhead enclosure stairways. Stairways serving bulkhead enclosures, not part of the required building egress, providing access from the outside grade level to the basement shall be exempt from the requirements of Sections R311.4.3 and R311.5 where the maximum height from the basement finished floor level to grade adjacent to the stairway does not exceed 8 feet (2438 mm), and the grade level opening to the stairway is covered by a bulkhead enclosure with hinged doors or other approved means.

R311.6 Ramps.

R311.6.1 Maximum slope. Ramps shall have a maximum slope of one unit vertical in eight units horizontal (12.5-percent slope).

R311.6.2 Landings required. A minimum 3-foot-by-3-foot (914 mm by 914 mm) landing shall be provided:

1. At the top and bottom of ramps,
2. Where doors open onto ramps,
3. Where ramps change direction.

R311.6.3 Handrails required. Handrails shall be provided on at least one side of all ramps exceeding a slope of one unit vertical in 12 units horizontal (8.33-percent slope).

R311.6.3.1 Height. Handrail height, measured above the finished surface of the ramp slope, shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm).

R311.6.3.2 Handrail grip size. Handrails on ramps shall comply with Section R311.5.6.3.

R311.6.3.3 Continuity. Handrails where required on ramps shall be continuous for the full length of the ramp. Handrail ends shall be returned or shall terminate in newel posts or safety terminals. Handrails adjacent to a wall shall have a space of not less than 1.5 inches (38 mm) between the wall and the handrails.

SECTION R312 GUARDS

R312.1 Guards required. Porches, balconies or raised floor surfaces located more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 36 inches (914 mm) in height. Open sides of stairs with a total rise of more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 34 inches (864 mm) in height measured vertically from the nosing of the treads.

Porches and decks which are enclosed with insect screening shall be provided with guards where the walking surface is located more than 30 inches (762 mm) above the floor or grade below.

R312.2 Guard opening limitations. Required guards on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which do not allow passage of a sphere 4 inches (102 mm) or more in diameter.

Exceptions:

1. The triangular openings formed by the riser, tread and bottom rail of a guard at the open side of a stairway are permitted to be of such a size that a sphere 6 inches (152 mm) cannot pass through.
2. Openings for required guards on the sides of stair treads shall not allow a sphere $4\frac{3}{8}$ inches (107 mm) to pass through.

SECTION R313 SMOKE ALARMS

[F] **R313.1 Smoke alarms.** Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the bedrooms.
3. On each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels,

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1405.11.1 Length and height. The length or height of any section of thin exterior structural glass veneer shall not exceed 48 inches (1219 mm).

1405.11.2 Thickness. The thickness of thin exterior structural glass veneer shall be not less than 0.344 inch (8.7 mm).

1405.11.3 Application. Thin exterior structural glass veneer shall be set only after backing is thoroughly dry and after application of an approved bond coat uniformly over the entire surface of the backing so as to effectively seal the surface. Glass shall be set in place with an approved mastic cement in sufficient quantity so that at least 50 percent of the area of each glass unit is directly bonded to the backing by mastic not less than 0.25 inch (6.4 mm) thick and not more than 0.625 inch (15.9 mm) thick. The bond coat and mastic shall be evaluated for compatibility and shall bond firmly together.

1405.11.4 Installation at sidewalk level. Where glass extends to a sidewalk surface, each section shall rest in an approved metal molding, and be set at least 0.25 inch (6.4 mm) above the highest point of the sidewalk. The space between the molding and the sidewalk shall be thoroughly caulked and made water tight.

1405.11.4.1 Installation above sidewalk level. Where thin exterior structural glass veneer is installed above the level of the top of a bulkhead facing, or at a level more than 36 inches (914 mm) above the sidewalk level, the mastic cement binding shall be supplemented with approved nonferrous metal shelf angles located in the horizontal joints in every course. Such shelf angles shall be not less than 0.0478-inch (1.2 mm) thick and not less than 2 inches (51 mm) long and shall be spaced at approved intervals, with not less than two angles for each glass unit. Shelf angles shall be secured to the wall or backing with expansion bolts, toggle bolts or by other approved methods.

1405.11.5 Joints. Unless otherwise specifically approved by the building official, abutting edges of thin exterior structural glass veneer shall be ground square. Mitered joints shall not be used except where specifically approved for wide angles. Joints shall be uniformly buttered with an approved jointing compound and horizontal joints shall be held to not less than 0.063 inch (1.6 mm) by an approved nonrigid substance or device. Where thin exterior structural glass veneer abuts nonresilient material at sides or top, expansion joints not less than 0.25 inch (6.4 mm) wide shall be provided.

1405.11.6 Mechanical fastenings. Thin exterior structural glass veneer installed above the level of the heads of show windows and veneer installed more than 12 feet (3658 mm) above sidewalk level shall, in addition to the mastic cement and shelf angles, be held in place by the use of fastenings at each vertical or horizontal edge, or at the four corners of each glass unit. Fastenings shall be secured to the wall or backing with expansion bolts, toggle bolts or by other methods. Fastenings shall be so designed as to hold the glass veneer in a vertical plane independent of the mastic cement. Shelf angles providing both support and fastenings shall be permitted.

1405.11.7 Flashing. Exposed edges of thin exterior structural glass veneer shall be flashed with overlapping corrosion-resistant metal flashing and caulked with a waterproof compound in a manner to effectively prevent the entrance of moisture between the glass veneer and the backing.

1405.12 Exterior windows and doors. Windows and doors installed in exterior walls shall conform to the testing and performance requirements of Section 1714.5.

1405.12.1 Installation. Windows and doors shall be installed in accordance with approved manufacturer's instructions. Fastener size and spacing shall be provided in such instructions and shall be calculated based on maximum loads and spacing used in the tests.

1405.12.2 Window sills. In Occupancy Groups R-2 and R-3, one- and two-family and multiple-family dwellings, where the opening of the sill portion of an operable window is located more than 72 inches (1829 mm) above the finished grade or other surface below, the lowest part of the clear opening of the window shall be a minimum of 24 inches (610 mm) above the finished floor surface of the room in which the window is located. Glazing between the floor and a height of 24 inches (610 mm) shall be fixed or have openings such that a 4-inch (102 mm) diameter sphere cannot pass through.

Exception: Openings that are provided with window guards that comply with ASTM F 2006 or F 2090.

1405.13 Vinyl siding. Vinyl siding conforming to the requirements of this section and complying with ASTM D 3679 shall be permitted on exterior walls of buildings of Type V construction located in areas where the basic wind speed specified in Chapter 16 does not exceed 100 miles per hour (45 m/s) and the building height is less than or equal to 40 feet (12 192 mm) in Exposure C. Where construction is located in areas where the basic wind speed exceeds 100 miles per hour (45 m/s), or building heights are in excess of 40 feet (12 192 mm), tests or calculations indicating compliance with Chapter 16 shall be submitted. Vinyl siding shall be secured to the building so as to provide weather protection for the exterior walls of the building.

1405.13.1 Application. The siding shall be applied over sheathing or materials listed in Section 2304.6. Siding shall be applied to conform with the water-resistive barrier requirements in Section 1403. Siding and accessories shall be installed in accordance with approved manufacturer's instructions. Unless otherwise specified in the approved manufacturer's instructions, nails used to fasten the siding and accessories shall have a minimum 0.313-inch (7.9 mm) head diameter and 0.125-inch (3.18 mm) shank diameter. The nails shall be corrosion resistant and shall be long enough to penetrate the studs or nailing strip at least 0.75 inch (19 mm). Where the siding is installed horizontally, the fastener spacing shall not exceed 16 inches (406 mm) horizontally and 12 inches (305 mm) vertically. Where the siding is installed vertically, the fastener spacing shall not exceed 12 inches (305 mm) horizontally and 12 inches (305 mm) vertically.

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TABLE R611.9
DESIGN TENSILE STRENGTH OF HEADED BOLTS CAST IN CONCRETE^a

DIAMETER OF BOLT (inches)	MINIMUM EMBEDMENT DEPTH (inches)	DESIGN TENSILE STRENGTH ^b (pounds)
1/4	2	1040
3/8 with washer ^c	2 3/4 ^d	2540
1/2 with washer ^c	4 ^d	4630

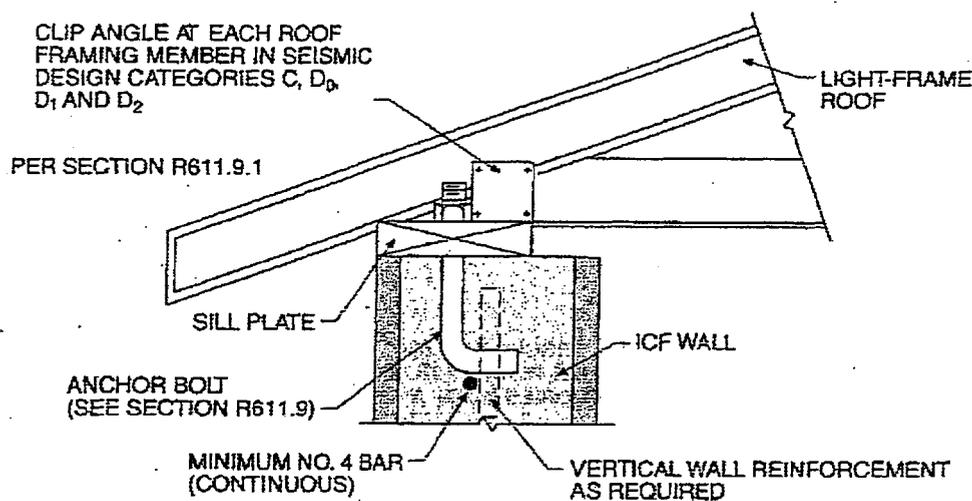
For SI: 1 pound per square inch = 6.895 kPa.

a. Applicable to concrete of all strengths. See Notes (c) and (d).

b. Values are based on ASTM F 1554, Grade 36 bolts. Where ASTM A 307, Grade A headed bolts are used, the strength shall be increased by 1.034.

c. A hardened washer shall be installed at the nut embedded in the concrete or head of the bolt to increase the bearing area. The washer is not required where the concrete strength is 4000 psi or more.

d. Embedment depth shall be permitted to be reduced 1/4-inch where 4000 psi concrete is used.



NOTE: Section cut through flat wall or vertical core of a waffle- or screen-grid wall.

FIGURE R611.9
ROOF SILL PLATE—ICF WALL CONNECTION

SECTION R612 CONVENTIONALLY FORMED CONCRETE WALL CONSTRUCTION

R612.1 General. Conventionally formed concrete walls with flat surfaces shall be designed and constructed in accordance with the provisions of Section R611 for Flat ICF walls or in accordance with the provisions of ACI 318.

SECTION R613 EXTERIOR WINDOWS AND GLASS DOORS

R613.1 General. This section prescribes performance and construction requirements for exterior window systems installed in wall systems. Windows shall be installed and flashed in accordance with the manufacturer's written installation instructions. Written installation instructions shall be provided by the manufacturer for each window.

R613.2 Window sills. In dwelling units, where the opening of an operable window is located more than 72 inches (1829 mm) above the finished grade or surface below, the lowest part of the

clear opening of the window shall be a minimum of 24 inches (610 mm) above the finished floor of the room in which the window is located. Glazing between the floor and 24 inches (610 mm) shall be fixed or have openings through which a 4-inch-diameter (102 mm) sphere cannot pass.

Exceptions:

1. Windows whose openings will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening when the opening is in its largest opened position.
2. Openings that are provided with window guards that comply with ASTM F 2006 or F 2090.

R613.3 Performance. Exterior windows and doors shall be designed to resist the design wind loads specified in Table R301.2(2) adjusted for height and exposure per Table R301.2(3).

R613.4 Testing and labeling. Exterior windows and sliding doors shall be tested by an approved independent laboratory, and bear a label identifying manufacturer, performance characteris-

That she is a citizen of the United States of America; that she is over the age of 18 years, not a party to the above-entitled action, and competent to be a witness therein; that on the date herein listed below, affiant served via United States mail, postage prepaid, copies of:

- (1) **Brief of Appellants;** and
- (2) **Affidavit of Service by Mail** addressed to the following parties:

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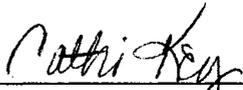
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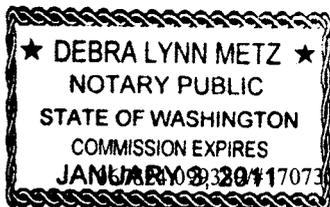
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DATED this 3rd day of December, 2007.



Cathi Key

SIGNED AND SWORN to before me on December 3, 2007 by Cathi Key.





Print Name: Debra Metz
Notary Public Residing at Lauma
My appointment expires: 1-3-2011