

**1904 SAFE-PLACE STATUTE: PUBLIC BUILDINGS: NEGLIGENCE OF OWNER**

Give Wis JI-Civil 1005.

In addition, the defendant has the duty to comply with the provisions of the statutes of Wisconsin which define a "public building" as any structure used by the public or by three or more tenants and require that every owner of a public building shall so construct, repair, or maintain such public building as to render the same safe. The term "public building" means and includes any structure, including exterior parts of such building, such as a porch, exterior platform, or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or used by the public or by three or more tenants.

(The defendant's building located at \_\_\_\_\_ Street, at the time in question, was a public building under the provisions of the law just referred to.)

Another section of the Wisconsin statutes provides that the term "safe" or "safety" as applied to a public building means such freedom from danger to the life, health, safety, or welfare of the public as the public building will reasonably permit.

[Here give the last three paragraphs of Wis JI-Civil 1900.4.]

**COMMENT**

The instruction and comment were originally published in 1965. The instruction was revised in 1986. The comment was reviewed without change in 1990.

Wis. Stat. §§ 101.01(2)(g) and (h) and 101.11(1). The last statute has not been quoted in full. The wording of the statutes should be used to conform with the facts of the case. Krause v. V. F. W. Post 6498, 9 Wis.2d 547, 552, 101 N.W.2d 645, 648 (1960).

The third paragraph (in parentheses) is not to be used unless the building can be held to be a public building as a matter of law. In Knapke v. Grain Dealer Mut. Ins. Co., 54 Wis.2d 525, 527, 197 N.W.2d 737 (1972), a barn was held to be a public building as a matter of law.

When a safe-place violation has been proved, the law presumes the damage was caused by the failure to perform the safe-place duty. Fondell v. Lucky Stores, Inc., 85 Wis.2d 220, 230-31, 270 N.W.2d 205 (1978).

As to unsafe conditions, see Leitner v. Milwaukee County, 94 Wis.2d 186, 194, 287 N.W.2d 803 (1980); Dykstra v. Arthur G. McKee & Co., 92 Wis.2d 17, 284 N.W.2d 692 (1979); Stefanovich v. Iowa Nat'l Mut. Ins. Co., 86 Wis.2d 161, 171, 271 N.W.2d 867 (1978); Zehren v. F. W. Woolworth Co., 11 Wis.2d 539, 105 N.W.2d 563 (1960).

The status of a defendant as an "owner" is discussed in Hortman v. Becker Constr. Co., Inc., 92 Wis.2d 210, 226-31, 284 N.W.2d 621 (1979); Callan v. Peters Constr. Co., 94 Wis.2d 225, 288 N.W.2d 146 (Ct. App. 1979); Ruppa v. American States, Inc., 91 Wis.2d 628, 284 N.W.2d 318 (1979).