LIABILITY FOR DEFECTS IN PUBLIC STREETS AND SIDEWALKS (Approved 11/99)

A. Liability of Municipality

NOTE TO JUDGE


B. Liability of Abutting Owner or Occupant

1. In General

a. As to Construction or Other Activity

The owner (occupant) of residential premises abutting a public sidewalk is not responsible for defects therein caused by the action of the elements or by the wear and tear incident to public use. If, however, you find that the defective condition of the sidewalk was the result of the negligent construction thereof by the owner (occupant) or that it resulted from an activity, commercial or otherwise,

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which was carried on by him/her, the plaintiff may recover for the injuries proximately resulting from such defective condition.

**Cases:**


**b. As to Repairs**

A residential property owner owes no duty to the public to repair a sidewalk which is in a state of disrepair by reason of normal wear and tear or by reason of the elements such as rain, snow, frost, and the like. Nor is mere failure fully to correct the old condition a sufficient basis for liability.

Where, however, the owner attempts to make repairs to correct some defect therein for which he/she is not responsible, he/she becomes responsible if he/she makes the repairs negligently and thereby causes the sidewalk, after the repairs, to be more dangerous than before or if he/she causes a new hazard, different from the old.
Cases:


Where the abutting owner, although not obligated to construct a sidewalk, does so in such a manner that it is hazardous to pedestrians, it is a public nuisance and the owner is liable. *Braelow v. Klein*, 100 N.J.L. 156 (E. & A. 1924). An owner, attempting to repair an existing sidewalk, or to correct some defect therein, may create a nuisance and be responsible if the sidewalk, after the attempt to repair or correct is more dangerous than before, or the new hazard is different from the old. *Istvan v. Engelhardt*, 131 N.J.L. 9 (Sup. Ct. 1943).

2. Snow and Ice

a. Liability of Owner (Occupant) Who Undertakes to Clear Sidewalk

The owner (occupant) of residential premises abutting a public sidewalk is not required to keep the sidewalk free from the natural accumulation of ice and
snow. But he/she is liable if, in clearing the sidewalk of ice and snow, he/she, through his/her negligence, adds a new element of danger or hazard, other than that caused by the natural elements, to the use of the sidewalk by a pedestrian. In other words, while an abutting owner (occupant) is under no duty to clear his sidewalk of ice and snow, he/she may become liable where he/she undertakes to clear the sidewalk and does so in a manner which creates a new element of danger which increases the natural hazard already there.

Therefore, should you find that the defendant, in undertaking to remove the ice and snow from his/her sidewalk, created a new hazard or increased the existing hazard and that this new or increased hazard proximately caused or concurred with the natural hazard to cause plaintiff’s injuries, then you must find for the plaintiff.

Should you find, however, that the defendant did not increase the natural hazard or create a new element of danger which proximately caused or concurred in causing plaintiff’s injuries, you must find for the defendant.

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\(^2\)Liptak v. Frank, 206 N.J. Super. 336 (App. Div. 1985) holding that residential landowners owed no duty to pedestrians, under either common law or municipal ordinance, to remove ice and snow from their abutting sidewalk.
Cases:


b. Liability of Owner of Commercial Property for Defects, Snow and Ice Accumulation and Other Dangerous Conditions in Abutting Sidewalks

The law imposes upon the owner of commercial or business property the duty to use reasonable care to see to it that the sidewalks abutting the property are reasonably safe for members of the public who are using them. In other words, the law says that the owner of commercial property must exercise reasonable care to see to it that the condition of the abutting sidewalk is reasonably safe and does not subject pedestrians to an unreasonable risk of harm. The concept of reasonable care requires the owner of commercial property to take action with regard to conditions within a reasonable period of time after the owner becomes aware of the dangerous condition or, in the exercise of reasonable care, should have become
aware of it. If, therefore, you find that there was a condition of this sidewalk that was dangerous in that it created an unreasonable risk of harm for pedestrians, and if you find that the owner knew of that condition or should have known of it but failed to take such reasonable action to correct or remedy the situation within a reasonable period of time thereafter as a reasonably prudent commercial or business owner would have done under the circumstances, then the owner is negligent.

NOTE TO JUDGE

Include the following where notice of the condition is an issue.

But, in this case, the property owner contends that he/she had no notice or knowledge of the alleged dangerous condition and, therefore, cannot be held responsible for it. In that connection, I must make you aware of this rule: The owner of commercial or business property is chargeable with a duty of making reasonable observations of his/her property, including the abutting sidewalk, in order to discover any dangerous condition that might develop or occur. The owner must make observations of his/her property, including the sidewalk, with the

3If the unsafe condition is alleged to be snow and ice, N.J.S.A. 40:64-12 and any ordinance adopted by the municipality might be charged as a factor, the jury should consider the reasonableness of the time the defendant(s) has (have) waited to remove or reduce a snow or ice condition from the sidewalk.
frequency that a reasonably prudent commercial property owner would in the circumstances. If you find that such a reasonable observation would have revealed the dangerous condition alleged in this case, then the property owner is chargeable with notice of the condition although he/she did not actually know about it; that is, he/she is as much responsible for the condition as if he/she had actual knowledge of its existence.

**NOTE TO JUDGE**

Include the following where the owner has taken some action with regard to the condition and the adequacy of the action is in question.

What actions must the owner of commercial property take with regard to defects/snow/ice accumulation/dangerous conditions? The action required by the law is action which a reasonably prudent person would take or should have taken in the circumstances present to correct the defect/snow/ice accumulation/dangerous condition, to repair it/remove it or to take other actions to minimize the danger to pedestrians (for example, to give warning of it) within a reasonable period of time after notice thereof. The test is: did the commercial property owner take the action that a reasonably prudent person who knows or should have known
of the condition would have taken in that circumstance? If he/she did, he/she is not negligent. If he/she did not, he/she is negligent.4

NOTE TO JUDGE


3. **Nuisance, Sidewalk**

A street and every part of it is so far dedicated to the public that any act or obstruction which unnecessarily incommodes or impedes its lawful use is a nuisance.

One who constructs a drain, grating or a coal hole or similar structure in the sidewalk does it subject to the right of safe passage of the public over and along every part of the sidewalk. In making such use of the sidewalk, he/she is required to do so by a method of construction which does not create a nuisance and, having done so, is under a further duty of exercising reasonable care to keep the structure safe for the use of the public.

**Cases:**

4. Adoption of Nuisance by Subsequent Owner

Where, through the action of a prior owner of premises abutting a public sidewalk, a condition amounting to a nuisance has been created, one who takes title from the original creator of the condition and continues to maintain it may be held liable in damages to a user of the sidewalk who suffers injury by reason of such condition.

Cases: