

**5.20G LIABILITY OF FORMER OWNER OF COMMERCIAL
PROPERTY FOR DEFECTS OR OTHER DANGEROUS
CONDITIONS IN ABUTTING SIDEWALKS (Approved 5/84)**

During the time a former owner of commercial property owned or controlled that property, he/she was under a duty to use reasonable care to see to it that the sidewalks abutting the property were reasonably safe for members of the public who used them. He/She must have exercised reasonable care to see to it that the condition of the abutting sidewalk was reasonably safe and would not subject pedestrians to an unreasonable risk of harm. The concept of reasonable care requires a former owner to have taken action with regard to dangerous conditions created or maintained during his/her ownership or control within a reasonable period of time after the former owner became aware of the dangerous condition or, in the exercise of reasonable care, should have become aware of it. This duty of care is not avoided merely because a former owner is no longer the owner of the property. 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 which was created or maintained by defendant former owner, and if you find that the former owner knew of that condition or should have known of it but, irrespective of whether he/she continues to own the property, failed to take such reasonable action

to correct or remedy the situation within a reasonable period of time thereafter as a reasonable prudent person would have done under the same circumstances, then he/she is negligent.

[Where notice of the condition is an issue, add:]

But, in this case, defendant former owner contends that he/she had no notice or knowledge of the alleged dangerous condition which was created or maintained during his/her control and, therefore, cannot be held responsible for it. In that connection, I must make you aware of this rule: A former owner of commercial property is chargeable with a duty of having made reasonable observations of his/her property, including the abutting sidewalk during his/her ownership or control in order to discover any dangerous condition that might have developed or occurred. He/She must have made observations of the property, including the sidewalk, with the frequency that a reasonably prudent commercial property owner would in the same circumstances. If you find that such reasonable observations would have revealed the dangerous condition alleged in this case, then defendant former 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.

[Where a former owner has taken some action with regard to the condition and the adequacy of the action is in question, add:]

What action must the former owner take with regard to a dangerous condition that he/she maintained or controlled? The action required by the law is action which a reasonably prudent person would take or should have taken under the same circumstances to correct the dangerous condition (repair or remove it) or 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 former 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.

NOTE TO JUDGE

The liability of a former owner of commercial property for dangerous conditions created or maintained during the former owner's ownership and control is generally the same as that of the commercial owner. *See Cogliatti v. Ecco High Frequency Corp.*, 92 N.J. 402 (1983). This Charge 5.20G, therefore, is similar to 5.20B. There are, however, several caveats which might in certain cases require modification of the model charge insofar as it applies to former owners. First, the liability of former owner established in *Cogliatti* applies to accidents which have occurred after February 8, 1983. In cases involving accidents which have occurred prior to February 8, 1983, the duration of liability of former owners after conveyance is governed by *Sarnicandro v. Lake Developers, Inc.*, 55 N.J. Super. 475 (App. Div. 1959) which holds that liability continues after conveyance for a "reasonable period of time." In such a case the model charge must be modified accordingly. Second, although

Cogliatti has rejected this “reasonable period of time” limitation upon liability of a former owner in cases arising after February 8, 1983, the particular facts of a case might raise the applicability of the 10-year limitation contained in *N.J.S.A. 2A:14-1.1*. See *Cogliatti*, 92 *N.J.* at 413. Third, knowledge of a condition, actual or constructive, that a former owner had or should have had and knowledge that an owner had or should have had, as well as the action to correct or remedy a condition that a reasonably prudent former owner should have taken an action to correct, remedy or reduce the risk of harm that a reasonably prudent commercial owner should have taken, may differ depending upon the particular circumstances applicable to each. It is for this reason that the second and third portions of 5.19 and 5.28 are somewhat different. Additional modifications might be required depending upon the facts in a particular case. Fourth, in a snow and ice accumulation case, it would appear that former owners would not be liable except in the rare case after February 8, 1983 in which closing takes place either with those conditions on the grounds or during a snow/ice storm.

It should also be noted that the contractual relationship between the former owner and owner is not one of the circumstances that should affect liability vis-a-vis the injured plaintiff. Rather, the contractual relationship, if any, is a consideration for the issues of indemnification and/or comparative negligence. *Cogliatti*, 92 *N.J.* at 414. The model charge does not, therefore, make specific reference to the contractual relationship.