Snowy Sidewalks Come With Liability Concerns
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This article was originally published in the February 21, 2014 edition of BizWest

Recent winters along the Front Range have been relatively mild. This winter, however, has reminded us that snow, slippery roads and unpleasantly-cold temperatures can make for dangerous times.

Of considerable concern to businesses and property owners is the need to remove snow and ice, minimizing the chance of receiving a municipal ticket, and the risk that someone will suffer an injury. Snow removal obligations are set forth in municipal or county codes and, indirectly, in the premises liability provisions of the Colorado Revised Statutes.
The Fort Collins municipal code requires that "owners or occupants of property abutting sidewalks within the city shall at all times keep the sidewalks abutting the lot or lots owned or occupied by them free and clear of snow and ice." Greeley, Longmont, and Loveland have similar rules.

Notably, these city codes require owners and tenants to remove snow and ice without regard for who actually owns the sidewalk. Even where the sidewalk is owned by the city, owners and tenants are obligated to clear them. The respective codes also provide, with limited variation, that snow and ice must be removed within 24 hours after the accumulation of snow or after the snow has stopped to avoid a violation. Generally, the codes provide that failure by the owner or tenant to remove the snow can result in the city taking action to do so, after which the owner will be billed for the city's fees and costs of such removal. Failure to pay such bills can lead to liens against the subject property.

But civil liability for injuries sustained due to failure to remove snow and ice is a different matter. Such liability is much more dependent upon the actual ownership of the surface on which the snow and ice have accumulated, unless the municipal ordinance specifically provides otherwise. Therefore, if an owner of property adjacent to a public sidewalk fails to clear accumulated snow and ice, that owner can be guilty of a municipal code violation but, at the same time, may not be liable for a slip-and-fall injury that occurs on that sidewalk if he or she does not actually own the sidewalk.

Civil liability in most such cases is based on Colorado's premises liability law, which states that owners of property are liable for injuries suffered by others on their property, which injuries are due to the condition of the property or due to activities conducted or circumstances existing on the property, only according to the specific provisions of that statute. The statute describes differing levels of duties and liability depending upon the status of the injured person as a trespasser, licensee, or invitee (as those persons are defined in the statute) on the owner's property. Landowners owe lesser duties to trespassers, more duties to licensees, and the highest duties to invitees.

A pair of cases that illustrate the importance of property ownership as a deciding factor in the determination of civil liability are a 1988 Colorado Supreme Court case known as Bittle v.

Brunetti and a 1995 Colorado Court of Appeals case known as Jules v. Embassy Properties, Inc. In the Bittle case, Denver business owners failed to remove accumulated snow and ice from the city-owned sidewalk in front of their commercial building in violation of Denver's municipal ordinance. A pedestrian, Mr. Bittle, suffered injuries when he slipped and fell on that sidewalk, and he sued the owners of the commercial property. The court, citing long-standing common law principles in Colorado, ruled that the business owners were not liable for Mr. Bittle's injuries. The court ruled that, while the business owners may have owed a duty to the City of Denver based on the snow removal ordinance, they owed no common law duty to individual pedestrians to remove naturally accumulating snow and ice from the city-owned sidewalk abutting their property. The court held "that unless a municipal government specifically states that owners will be civilly liable for violation of a snow removal ordinance, the common law 'no duty' rule will continue to be controlling." The fact that the sidewalk was owned by the City of Denver was critical.

Alternatively, in the Jules case, Jules slipped and fell on ice-covered steps at the office building owned by Embassy Properties. Critically, the steps were on Embassy's property. Embassy claimed it had no liability because it had contracted with a property manager for maintenance of the premises, and the property manager then had further hired an independent contractor to remove the snow. Jules claimed that Embassy owed her a duty, since she was an employee in Embassy's building and thus an invitee, and that Embassy "could not avoid that duty as a landowner by virtue of its property management agreement." The court ruled in favor of Jules based on the premises liability statute.

An understanding of your local ordinances and these cases can be important for property owners and tenants alike. Additionally, leases, property management agreements, and other such contracts may contain provisions that create further obligations or provide for indemnification against certain liabilities, and those provisions may include contractual duties that otherwise would not arise under common law or municipal ordinances. Especially in winters like this one, it is important to read the fine print, understand your duties, and act accordingly.

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