

snow removal

a **chicago landlord and tenant's guide** to snow removal

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Introduction

Every winter, an epidemic of slipping and falling strikes Chicago, wreaking havoc on local emergency rooms and even, on occasion, generating extra business for local funeral homes. Pedestrians break bones, tear ligaments, and even pay the ultimate price just for living in a winter wonderland. Distill down the seasonal batch of slip and fall injuries and you end up with a hearty collection of lawsuits. Many of these lawsuits get tossed out of court due to a decades-old Illinois law that protects property owners from liability for injuries caused by natural precipitation. Still, lawsuits are frustrating, time-consuming, and expensive even for the victors.

So, in our continuing effort to assist the Chicago landlord and tenant community, we present this guide to understanding your rights, duties, privileges, and immunities during times of inclement winter weather. In the first section, we explain the shoveling obligations imposed by Chicago municipal ordinance. In the second, we provide an overview of Illinois law regarding the liability of property owners to pedestrians who slip and fall on ice and snow.

I.

The City Of Chicago Requires Property Owners To Shovel Ice And Snow Off The Public Sidewalks.

Just because you don't actually own the sidewalk in front of your business or residence doesn't mean you can let the ice and snow accumulate while you sip hot chocolate by the fire and do nothing. The City of Chicago actually requires you to get off your duff and shovel the sidewalk -- or to pay someone else to do it for you. And if you don't do it, you can be fined. Although our erstwhile Mayor Daley once admitted that the City does not enforce the snow shoveling law, one north side alderman recently suggested that City employees photograph unshoveled sidewalks so tickets could be issued to offending property owners.

Typically, the first question anyone who lives in an apartment asks is: "Who gets fined if the sidewalks don't get shoveled?" To answer that, we turn to the actual language of the city ordinance, which imposes the obligation upon every "owner, lessee, tenant, occupant or other person having charge of any building or lot of ground in the city abutting upon any public way or public place." We do not profess to be lawyers here at **domu**, though we respectfully suggest that the operative phrase is "or other person having charge of any building or lot of ground." There's no case law on this (we checked), but we'd venture to guess that you can't be guilty of violating the ordinance unless you are actually the person "in charge of" the building. In other words, just being a "lessee," "tenant," or "occupant" is not enough. You need to be the building owner or management company, *unless your lease expressly assigns you responsibility for shoveling the sidewalk*. If you sign any sort of document specifically tasking you with shoveling the sidewalk in front of the premises you're renting, you are almost certainly the person "in charge" for statutory purposes.

The second question most people ask is: "What if I shoveled the whole damn sidewalk and six more inches fell while I was inside icing my sore back?" Thankfully, the city council accounted for the

scourge of lengthy precipitation by including some additional language in the statute. Here's how it works:

- Any snow or ice that accumulates before 4:00 p.m. must be removed within three hours.
- Any snow or ice that accumulates after 4:00 p.m. must be shoveled by no later than ten o'clock the following morning.
- No matter what, nobody ever has to work on Sunday.

In other words, you don't need to spend the whole day at home, constantly shoveling the sidewalk in a Sisyphean frenzy. Just make sure that by no later than 7:00 p.m. you've shoveled away all the snow that accumulated before 4:00 p.m. As we see it, that means you can either stop shoveling at 4:00 p.m. and call it a day (great for management companies whose employees have to go home and shovel their own sidewalks) or you can shovel, by no later than 7:00 p.m., however much snow fell by 4:00 p.m. (better for individual homeowners). Any snow that falls after 4:00 p.m. can be dealt with the following morning by ten o'clock, unless it's Sunday. Everyone gets the day off on Sunday.

But wait. There's more. If the sidewalk is greater than five feet in width, the City only requires removal of enough snow or ice to create a path five feet wide. If the snow or ice is frozen so hard that it cannot be removed without damaging the pavement, then the person "having charge" of the property must ensure that the sidewalk is "strewn with ashes, sand, sawdust, or some similar suitable material." (We at **domu** recommend rock salt.) The City strongly recommends that snow or ice not be shoveled into streets, crosswalks, or alleys or on top of fire hydrants.

And that brings us to the third question commonly asked: "What's the penalty for not shoveling?" For a resident, the answer is "not much." Any person "having charge" of the property who fails to shovel the snow and ice in timely fashion may be subject to a \$50.00 fine, and any licensed Chicago business that fails to shovel as required by the ordinance may be subject to fines ranging from \$250 to \$500 per day. On the other hand, anyone who faithfully discharges his shoveling obligations is granted immunity from any lawsuit filed by someone who slips and falls in a shoveled area and then attempts to claim that the injury was actually caused by faulty or negligent shoveling. (As we shall soon see, hundreds and perhaps thousands of lawsuits have been filed in Illinois by people claiming they were injured by "unnatural accumulations" of snow or ice caused by the shoveling of sidewalks and driveways.) The immunity granted by the ordinance, however, does not apply if the person who shoveled the snow is shown to have engaged in willful misconduct.

To encourage compliance with the ordinance and promote as much shoveling as possible, the City of Chicago encourages concerned citizens to do any or all of the following things:

- Call "311" to report any stretches of the public way that have not been properly or timely shoveled.
- File an ["online snow removal request."](#)

- Print special “[door-hangers](#)” and affix them to the front of any building at which ice or snow has been permitted to accumulate.

The city also allows the general public to [nominate businesses and organizations for a “Winter Wonder Award”](#) if they “do an excellent job of clearing their sidewalks of snow and ice.” Winning businesses receive a letter of recognition and special mention on the Chicago Department of Transportation website. We at **domu** are very conscientious of our own shoveling obligations and boldly predict that no pedestrian will ever take a spill on the sidewalk outside our office. That’s why we’d like to encourage the entire Chicago landlord and tenant community to nominate us for a “Winter Wonder Award.”

II.

People Still Fall, People Still Sue. So How Do You Protect Yourself?

In July 2010, [the Illinois Supreme Court reaffirmed](#) the decades-old “natural accumulation rule,” under which owners cannot be held liable for slips and falls resulting from natural accumulations of ice or snow on their property. (We’re not just talking about the public sidewalks now. We’re talking about private property too.) For years, Illinois courts have consistently dismissed cases brought by (or on behalf of) dead and wounded civilians seeking recourse after they slipped and fell on a “natural accumulation” of ice or snow. Under Illinois law, it has never mattered not one whit whether the property owner had a reasonable amount of time to act, nor how long the ice and snow remained on the ground before the injury. Property owners have no affirmative obligation to shovel their property, absent a contractual obligation to do so. If a pedestrian should slip and fall because nobody ever shoveled, the pedestrian is, as they say, S.O.L.

So here’s why no good deed goes unpunished: If a property owner actually goes out and shovels, but someone slips and falls anyway, the property owner can then be sued for creating an “unnatural accumulation” of snow, for aggravating an existing condition, or even for shoveling negligently. In an ostensible effort to address this quirk in the law, Illinois created the Snow And Ice Removal Act, 745 ILCS 75/1 (the “Act”). Under the Act, owners, occupants, lessees, and managers of residential properties who shovel away ice and snow off the sidewalks are granted immunity from legal liability for slip and fall accidents, *even in cases involving allegations of an “unnatural accumulation” or negligent performance of snow removal*. Owners and managers of residential properties can be held liable only if the plaintiff can prove that they deliberately caused injury (or that the injury did not occur on a sidewalk). Business owners, however, do not enjoy any immunity under this Act.

So basically there are three ways an injured person can recover for a slip-and-fall caused by snow or ice:

1. A residential or commercial property owner or tenant was contractually required (for example, by lease or condominium declaration) to shovel away ice and snow, but failed to reasonably comply with that obligation.

2. A non-residential property owner actually shoveled away ice or snow, but created an “unnatural accumulation,” aggravated a natural condition, or performed the work negligently.
3. Any property owner, lessee, occupant, or manager engaged in clear wrongdoing, deliberately causing an injury while shoveling ice or snow.

In the paragraphs below, we’ll take a closer look at cases brought by persons who have sought to impose liability on property owners and managers in each of these contexts.

Assumption Of Snow Removal Obligations In Leases & Condominium Declarations.

A property owner, management company, or even third-party contractor may have a contractual obligation to shovel snow based on a lease, condominium declaration, or similar legal instrument, or as the result of an annual maintenance contract entered into with a property owner or manager. In these circumstances, courts have allowed slip and fall cases to proceed if the responsible party negligently failed to perform its snow removal obligations. For example, in December 1977 Joanne Tressler slipped while walking to her mailbox and fractured her arm. A few years earlier, her landlord had provided her a handbook stating that the landlord would arrange for snow removal. Having found that the landlord negligently failed to perform this duty, the court allowed Ms. Tressler to take her case to a jury. Incidentally, once a landlord or association assumes the obligation of snow removal, the duty runs even to persons who are not residents at the development in question. Thus, Barbara Schoondyke was able to sue the association where her parents owned a condominium after she slipped on the interior sidewalk on a snowy evening in February 1974.

Creation Of An Unnatural Accumulation Of Ice Or Snow.

Though property owners have no duty to remove natural accumulations of ice and snow, they may still be held liable if, as a result of shoveling, they either caused an “unnatural accumulation” of ice or snow, aggravated a natural condition, or performed the work negligently, thus causing injury. Naturally, every half-wit plaintiff’s lawyer attempts characterize his client’s injury as having resulted from one of these causes.

Most Cases Alleging An “Unnatural Accumulation” Are Unsuccessful

Most cases alleging that a slip and fall injury was caused by an “unnatural accumulation” of ice or snow are weeded out of the legal system before they ever reach trial because courts, perhaps sensitive to the danger posed by the loopholes in the “natural accumulation” rule, repeatedly emphasize that an “unnatural accumulation” of snow is something other than a natural accumulation that was altered in some fashion by human hands. For example:

- Mary Lee Lewis slipped as she walked down the stairs in front of her house one afternoon in December 1972 (prior to the Snow And Ice Removal Act) and endured more than a year of treatment before finally going under the knife to fix her damaged knee. She claimed that the

building janitor aggravated a natural condition (snow and ice on the stairs) by throwing salt in the area. The salt (or so she claimed) caused the ice to melt and then refreeze in a way that wouldn't have happened if the janitor had never done anything at all. The court disagreed that the mere spreading of salt can give rise to liability and knocked out her primary theory of recovery. (Fortunately for Mary, the court permitted the case to proceed under a second theory that the landlord negligently failed to install handrails in accordance with municipal code).

- Similarly, in January 1977 Helen Erasmus slipped on the sidewalk outside her townhome near Comiskey Park (as it was then known) and sued the Chicago Housing Authority. Her gripe was that the Authority dutifully shoveled away a thick layer of snow, but left about two inches of solid ice intact. She argued that once the Authority set about to remove the snow, it should have removed the ice along with it. The court disagreed. (This case, too, was decided before the Snow And Ice Removal Act.)
- In January 1990 Tom Watson (not the famed golfer) stepped on a patch of ice as he exited the J.C. Penney store in downstate Illinois. Seconds later, he was writhing on the ground in pain with a freshly broken collarbone. Naturally, he filed a lawsuit. At his deposition, he claimed to have slipped on ice formed from wet human footprints left by customers entering the store. Not unexpectedly, the court tossed out the case, ruling that icy footprints created in the wake of snow shoveling do not amount to an “unnatural accumulation.” (This case post-dated the Act, but the Act would not have applied anyway because J.C. Penney was not a residential property.)

Incidentally, the “natural accumulation” rule also applies to rain water, as Chicagoan Helen Lohan would reluctantly concede. In October 1978, Ms. Lohan slipped on a wet floor just inside the vestibule of a Dominick's Finer Foods at 87th and Cicero, but was unable to prove that the water was anything other than the natural product of foot traffic during a “nice downpour.” The court reaffirmed that Dominick's could not have been held responsible even if it was aware that the area was wet. Likewise, on a snowy February afternoon in February 1991, Carolyn Stypinski decided to cut through what's now known as the Chase Bank Building on Monroe. The marble floors were wet from foot traffic, and she promptly toppled over, fracturing a hearty collection of bones in her ankle. She sued, but her claims were tossed out of court.

A Small Number Of Cases Successfully Allege An “Unnatural Accumulation” Of Snow Or The Negligent Performance Of An Obligation To Shovel

So just what does a plaintiff have to do to succeed on an “unnatural accumulation” or negligent shoveling claim? In the former case, he needs to demonstrate that the presence of some other defective condition aggravated the forces of nature. For example:

- In January 1976 Lenora Lapidus permanently lost the use of her left arm after slipping on the front porch of her apartment. She thereafter pursued one of the rare cases that paid off (in her

case, to the tune of \$350,000). Ms. Lapidus was able to show that the combination of a faulty roof system and the bowing of her front porch caused the melting snow to drip down her front door and accumulate “unnaturally.”

In the case of a claim for negligent shoveling, successful plaintiffs have shown that a property owner actually reduced overall safety by incentivizing the pedestrian to alter her route, to her ultimate detriment. For example:

- On a snowy morning in February 1979, Patricia Williams slipped and fell descending the stairs from the office building where she worked. The landlord’s agent shoveled a narrow path in the middle of a stairwell, but didn’t shovel the sides. This caused Ms. Williams to descend the middle portion of the staircase and forego the option of walking through the deep snow on the sides where the handrails could be grasped for support. After slipping and injuring herself, she claimed that the landlord, having undertaken to shovel the stairs, did so negligently by encouraging the tenants to follow a path where there were no railings to grip for security. In this relatively rare instance, the court agreed. (The Snow And Ice Removal Act did not apply to this case because it had not yet taken effect and because the scene of the accident was not a residential property. Had the Act applied, the outcome would presumably have been different, even *with* a finding that the property owner was negligent. Of course, we cannot be certain of this, but it’s still fun to act like a law professor from time to time.)

Importantly, if a property owner gratuitously spreads salt to facilitate the melting of ice, a continuing duty to spread salt in future snowstorms is not created. For example, in 1981 a Northwest Airlines employee named Michael Burke banged himself up pretty good after slipping on some ice outside one of the gates at Midway Airport. He claimed that because the City had gratuitously thrown ice in that area following a previous snowstorm it voluntarily assumed to undertake similar steps in the future. The court disagreed.

The Snow And Ice Removal Act Immunizes Residential Property Owners Who Shovel “The Sidewalks”.

As noted above, the Snow And Ice Removal Act grants immunity to persons who own, lease, occupy, or manage residential property for injuries suffered as a result of snowy or icy conditions after those persons remove, or attempt to remove, snow and ice from the sidewalk abutting the residential property. This Act, which does *not* protect business owners, eliminates any discussion about “unnatural accumulations” of snow. Unless the person who actually got off his duff and shoveled the sidewalk engaged in “willful or wanton” conduct (something akin to intentional wrongdoing), there can be no liability, even if the injury resulted from an unnatural accumulation or negligent performance of the work. (Our lawyers tell us that “wanton” refers to the deliberate infliction of injury and has nothing to do with the dumplings in Chinese soup.)

Because the Act applies strictly to the shoveling of snow on “sidewalks abutting the property,” plaintiffs’ lawyers consistently argue, typically without success, that sidewalks on private property are

not encompassed by the statute or, better yet, that their clients slipped on something other than a “sidewalk.” For example, Kathryn Bremer of Peoria claimed to have slipped on a “walkway,” not a “sidewalk,” because sidewalks are adjacent to public streets, whereas walkways are inside private communities. Her case was tossed out of court. Ditto for John Kurczak and Lisa Yu, who learned the hard way that it makes no difference whether the “sidewalk” actually abuts public property or can be characterized as a “walkway,” a “pathway,” or a “stoop.” These unfortunate souls, who injured themselves on pedestrian walkways within private communities, were all forced to pay their own medical expenses.

On the other hand, Kevin Gallagher (fractured leg bones and all) was recently given the green light to proceed to trial with a slip-and-fall claim premised on an unnatural accumulation of snow on a common driveway. The court ruled that a driveway, unlike a sidewalk, is designed for automobile traffic and therefore beyond the reach of the protections afforded by the Snow and Ice Removal Act. Shrewd pedestrians will see the lesson here: In a private community, always walk on the driveway during snowy and icy conditions. That way, neither the property owner, nor the managing agent, nor the snow-plow company can rely on the immunity made available under the statute.

Chicago Snow Shoveling Rules In A Nutshell.

- ✓ If you are “in charge” of any business or residence that abuts the public way, you are required by municipal ordinance to shovel the sidewalk. A landlord will likely be considered “in charge,” unless a lease expressly delegates responsibility to the tenant.
- ✓ Any snow or ice that accumulates before 4:00 p.m. must be removed within three hours.
- ✓ Any snow or ice that accumulates after 4:00 p.m. must be removed by no later than 10:00 a.m. the morning.
- ✓ Nobody is ever required to shovel on a Sunday.
- ✓ On large sidewalks, only a path five feet wide need be created.
- ✓ If the snow or ice is frozen so hard that it cannot be removed without damaging the pavement, then treat the affected area with salt or similar material.
- ✓ Do not shovel ice or snow into streets, crosswalks, or alleys or on top of fire hydrants.
- ✓ Failure to shovel the sidewalk may result in the imposition of a fine by the City of Chicago.
- ✓ If you are concerned about another property owner’s failure to shovel, call “311,” file an online snow removal request, or print a special door hanger from the City of Chicago website and affix it to the front of the offending property.