

September 2003

Association's Duty to Remove Snow

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With the approaching inclement weather and lingering memories of last winter, many of our clients have asked us about their responsibility for clearing snow and ice from the common elements or common areas within their communities.

Community Associations typically have the duty to undertake reasonable efforts to remove snow and ice from the common elements or common areas where pedestrians and motorists are likely to travel. This duty stems from the Association's duty to maintain those areas under the Association's governing documents. In the unfortunate case that an individual is injured because snow or ice has not been reasonably removed, the Association may be liable to the individual for damages.

Many local jurisdictions have ordinances addressing snow removal. For instance, the City of Alexandria, Loudoun County, Montgomery County, and the City of Rockville require the owner or occupant of a building to remove snowfall from the sidewalk abutting the building, within 24 hours after the snow has ceased to fall. These local ordinances provide Community Associations with some guidance as to the expected standard of "reasonable" maintenance.

Preparing ahead for snow and ice removal is key. Whether an outside contractor will be used or employees of the Association will handle the duties, a plan should be in place in advance of the first snowfall. Additionally, snow removal costs should be included in the Association's budget. Budgeting for snow removal can be tricky, since the costs are significantly affected if the snowfalls deviate from the norm.

Snow removal services are provided by trash collection firms, construction companies and landscaping companies. There are three basic types of contracts for snow removal services in the Washington Metropolitan Area, flat fee, hourly and retainer.

1. Flat Fee Contracts. A flat fee is charged for all snow removal for the season. If there is more snowfall than usual, the Association saves money; however, if the winter is mild, the contractor may be paid more than otherwise. While this type of contract provides an Association with a set figure for budgeting purposes, an unusually severe winter poses the danger that the contractor may find it is losing money, leaving the Association with inadequate service.

2. Hourly Contracts. Under this type of contract the Association is billed at a set hourly rate. A two-hour minimum is often required. Typically, the Association is guaranteed that its streets will be plowed automatically, after two or more inches of snow have fallen. While this type of contract is more difficult to budget for, the Association only pays for the services rendered.

3. Retainer Contracts. The Association pays a flat fee based on estimated costs, against which snow removal services are charged as they are performed. Services rendered above the flat fee are billed separately.

When contracting for snow removal services, there are a number of provisions which should be included in the contract to protect the interests of the Association including a labor and materials warranty,

the conditions for terminating the contract, the responsibility of the contractor to obtain and maintain liability insurance, and an indemnification provision for the benefit of the Association. It is important to specify that the contractor shall not use any ice-melt substance, which will damage asphalt, concrete, or vegetation.

Finally, it is helpful to the contractor, particularly if the community has a parking lot, for the Association to submit a sketch of the development indicating where the Association wants or does not want snow piled. The Association should also provide the contractor with the names and telephone numbers of Association representatives to contact if an emergency or problem arises.

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