

rise to municipal liability. Gallagher v. City of Medford, 1988 Mass. App. Div. 59, 61 (1988).

III. Limiting Liability

If a municipality decides to make repairs to a private way, there are several steps that may be taken to limit potential liability. As Section 24 makes clear, a municipality should post warnings at the beginning of private ways indicating them as private and dangerous. It is also advisable to obtain agreements from abutters to indemnify and hold the municipality harmless for personal injury or property damage resulting from any defect. Finally, it has been held that a municipality may enter into an agreement whereby a third-party maintains the way. Wilson v. Boston, 117 Mass. 509 (1875). In such a case, the third-party, rather than the municipality, would be held liable for any injury arising from a defect even if the municipality had made repairs within the previous six years. Thus, the municipality should also obtain an affirmative agreement from abutters that they will provide for the future maintenance and repair of these ways.

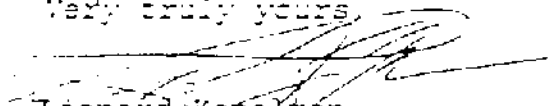
IV. Snow Removal on Private Ways

Removal of snow on private ways is governed by Massachusetts General Laws Chapter 40, Section 6C which provides:

A city or town which accepts this section in the manner provided in section six D may appropriate money for the removal of snow and ice from such private ways within its limits and open to the public use as may be designated by the city council or selectmen; provided, that, for the purposes of section twenty-five of chapter eighty-four, the removal of snow or ice from such a way shall not constitute a repair of a way.

Because Section 6C excludes the removal of snow or ice from the definition of repair, no liability should attach for injuries or property damage caused by the removal or failure to remove snow or ice. However, it should be noted that the negligence of a municipal employee in removing snow or ice might still be actionable. Thus while a municipality would not be found liable for damages resulting from a plaintiff's sliding off a poorly plowed road, the municipality would be held liable if a municipal employee, while plowing the way, damaged a parked car.

Very truly yours,


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