

MUNICIPAL TORT LIABILITY DAMAGES OR INJURIES FROM DEFECTS IN PUBLIC WAYS

G.L. C. 84

General Laws, chapter 84, section 15, et seq. establishes the procedure for asserting tort claims against municipalities for damages or injuries resulting from defects in public ways. The following provides an outline of the issues concerning such claims.

I. WHAT TYPES OF CLAIMS ARE COVERED BY CHAPTER 84?

If a person sustains bodily injury or damage to his property by reason of a defect or want of repair in or upon a public way, **and** the entity responsible for maintaining the way had reasonable notice of the defect such that the defect could have been prevented by the exercise of reasonable care, he may bring a claim against the entity responsible for maintaining said way. G.L. c. 84, § 15. A “defect” in a public way is anything which renders the road unsafe or inconvenient for public travel. Huff v. City of Holyoke, 386 Mass. 582 (1982) (chain stretched across the road).

To satisfy the “reasonable notice” requirement, plaintiff has the burden of producing evidence that the defect was in existence long enough for the municipality to have known of it, Hanson v. City of Worcester, 346 Mass. 51, 52 (1963), and failed to use reasonable care and diligence to remedy or guard against the defect. Powers v. City of Worcester, 1992 Mass. App. Div. 40 (1992). Plaintiff’s claim cannot go forward if the length of time of the defect is left to conjecture or if plaintiff has produced no evidence regarding the length of time. Id.

II. INITIATING A CLAIM

Presentment – Within **thirty (30) days** of the alleged injury, the claimant must provide the municipality with written notice of the claim. G.L. c. 84, § 18. The notice must include the name and residence of the person injured, and the time, place and cause of said injury. G.L. c. 84, § 18. The presentment letter must be signed by the claimant, and served on the mayor, city clerk or treasurer of a city, or one of the selectmen, the town clerk or treasurer of a town. G.L. c. 84, § 19.

When the Claim Must Be Filed – If the entity liable for maintaining the way does not pay the claim, the claimant may bring an action in tort within **three (3) years** after the date of the injury. G.L. c. 84, § 18.

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III. DAMAGES

Cap on Damages – Chapter 84 limits damages for claims arising out of defects in public ways to no more than one fifth (1/5) of one percent of the municipality’s state valuation last preceding the commencement of the action, nor more than five thousand dollars (\$5,000). G.L. c. 84, § 15.

IV. THE SOLE CAUSE RULE

A municipality may be liable for injuries resulting from a defect in a public way only if the defect was the sole cause of the injuries; if either a plaintiff’s negligent conduct or the wrongful conduct of a third person is also a cause of the injuries, that circumstance bars recovery against the municipality. Tomasello v. Commonwealth, 398 Mass. 284, 286 (1986).

V. SNOW AND ICE

Counties, cities and towns are immune from liability for any injury or damage sustained upon a public way because of snow or ice, if the way was otherwise safe and convenient for public travel. G.L. c. 84, § 17; Gamere v. 236 Commonwealth Avenue Condominium Assoc., 19 Mass. App. Ct. 359, 363 (1985) (plaintiff must show a defect in the public way, apart from the accumulation of ice and snow, to recover). However, municipalities are obligated to keep public ways reasonably safe and convenient for travel, which includes removal of snow and ice. G.L. c. 84, §§ 1, 22.

However, it should be noted that, in the case of *properties* a municipality owns and maintains, a municipality is responsible to act reasonably in removing snow and ice. The distinction once made in Massachusetts between “natural” and “unnatural” accumulations of snow and ice was abolished by the Supreme Judicial Court in Papadopoulos v. Target Corporation, 457 Mass 368 (2010); liability is now based upon whether property owners, (including municipalities) act reasonably in removing ice and snow from their properties. What is reasonable depends on the amount of foot traffic to be anticipated on the property, the magnitude of the risk reasonably feared, and the burden and expense of snow and ice removal. Id. at 384.

In sum, municipalities have an affirmative obligation under G.L. c. 84 to remove snow and ice from public ways and under Papadopoulos to remove snow and ice from their properties.

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