

135.00

ABUTTING PROPERTY OWNER

135.01 Duty Of Owner Of Property Abutting Sidewalk

The owner of property abutting a public sidewalk is under a duty to exercise ordinary care not to create an unsafe condition [which would interfere] [by interfering] with the customary and regular use of the walk.

Comment

An owner of abutting property who alters a sidewalk for his own convenience has a duty to use ordinary care to maintain the alteration in a reasonably safe condition. *Kellems v. Schiele*, 297 Ill.App. 388, 394; 17 N.E.2d 604, 606 (4th Dist.1938) (plaintiff walking on the sidewalk fell into a coal chute insecurely covered with a piece of iron); *Sweat v. Aircraft & Diesel Equipment Corp.*, 335 Ill.App. 177, 81 N.E.2d 8 (1st Dist.1948) (owner liable when it roped off section of sidewalk to prevent the possibility of injury from a falling cornice, thereby forcing plaintiff to use a rough and slippery portion of the sidewalk on which she fell); *McDonald v. Frontier Lanes, Inc.*, 1 Ill.App.3d 345, 272 N.E.2d 369 (2d Dist.1971) (owner liable where he allowed cars to park in a position blocking the sidewalk and forcing pedestrians to walk on a parkway).

For liability to be imposed, however, a landowner must perform some affirmative act in creating an unsafe condition or obstruction or in asserting control over a sidewalk. *Dodd v. Cavett Rexall Drugs, Inc.*, 178 Ill.App.3d 424, 533 N.E.2d 486, 127 Ill.Dec. 614 (1st Dist.1988) (no affirmative act to assert control where sidewalk in question was not the only means of ingress and egress, and building did not even have an entrance along that sidewalk); *accord*, *Thiede v. Tambone*, 196 Ill.App.3d 253, 553 N.E.2d 817, 143 Ill.Dec. 110 (2d Dist.1990); *Smith v. Rengel*, 97 Ill.App.3d 204, 422 N.E.2d 1146, 52 Ill.Dec. 937 (4th Dist.1981) (landlord's actions in mowing lawn, shoveling snow and filling holes in parkway adjacent to walkway constituted sufficient exercise of control to impose liability for plaintiff's injury caused by hole in parkway); *Perry v. Chicago & North Western Transp. Co.*, 54 Ill.App.3d 82, 369 N.E.2d 155, 11 Ill.Dec. 701 (1st Dist.1977) (instruction properly refused where construction of passenger terminal, though blocking motorists' vision of pedestrians, did not alter or create an obstruction on a sidewalk); *Repinski v. Jubilee Oil Co.*, 85 Ill.App.3d 15, 405 N.E.2d 1383, 40 Ill.Dec. 291 (1st Dist.1980) (no liability when plaintiff tripped in a depressed area of sidewalk also used as driveway, where driveway was used for intended purpose and defect was caused by normal deterioration).

However, an owner is not liable for ice forming on a sidewalk as a result of his piling snow next to the sidewalk. *Riccitelli v. Sternfeld*, 1 Ill.2d 133, 115 N.E.2d 288 (1953) (merely adding snow from defendant's business premises to piles created by shoveling sidewalk did not create an unnatural condition).