

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.



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Non-Shovelers On Thin Ice?

Courts Create Exceptions To The General Rule Of Non-Liability

Just when you put the rake away for the season, it is time to get the snow shovel and bag of salt out of the garage. This begs the question, if you do not shovel or salt your sidewalks, what is your liability exposure for someone slipping, falling and injuring themselves on your property?

The general rule is that property owners cannot be held liable when a person's injury results from a natural accumulation of ice or snow. *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45. In *Brinkman v. Ross* (1993), 68 Ohio St.3d 82, the Ohio Supreme Court stated that, "it is well established that an owner or occupier of land ordinarily owes no duty to business invitees to remove natural accumulations of ice and snow from the private sidewalks on the premises, or to warn the invitee of the dangers associated with such natural accumulations of ice and snow." Ohio courts have reasoned that snow and ice are inherent dangers of living in Ohio, and therefore, Ohioans must recognize and protect themselves against such dangers.

However, before you put your snow shovel up for sale on eBay, please keep reading. Initially, there is the matter of courtesy to your neighbors. As good as it might feel to tell that pesky neighbor, who always criticizes you for failing to shovel your sidewalk, that you cannot be held liable for natural accumulations of

ice or snow, it just does not sound good. Further, there might be circumstances in your particular case that might enhance the duty you owe to others. For example, a lease agreement might require you to keep an area free from snow and ice. Moreover, there might be local rules or ordinances that apply. Additionally, courts have created two exceptions to the general rule of non-liability. First, a property owner can be liable for permitting unnatural accumulations of ice and snow. So, what are unnatural accumulations of ice and snow? There is no clear definition. However, an unnatural accumulation of ice might occur where your downspout empties out onto your sidewalk. An unnatural accumulation of snow might occur where you shovel the snow from your driveway onto your sidewalk. Second, a property owner can be liable where he or she has superior knowledge of a particular danger. For example, the property owner might know that snow and ice on a particular set of stairs creates a more substantial risk than a passerby might expect.

Thus, it is recommended that you keep your sidewalks free from snow and ice. Even if the threat of potential liability does not motivate you to shovel and salt, courtesy to your neighbors should.

By Mark Melko

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Over TIFs

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Featured Attorneys



Richard D. Bringardner

Dick is a Certified Specialist in Estate Planning, Trust and Probate Law, and chairs that practice area of the firm. His practice also encompasses real estate and business planning.

He earned a BS with honors from Ashland University and is an Order of the Curia honors graduate of Capital University Law School. Admitted in 1978, he serves on several Bar Association committees at the local, state and national level.

Dick was a founding organizer of St. Brigid of Kildare Church and is involved with the Tourette Syndrome Association of Ohio. He and his wife, Susan, have two teenage sons and are long time residents of Dublin.



Eugene L. Hollins

Gene joined the firm this past summer bringing with him extensive municipal law experience in both the public and private sectors. He earned his degree from The Ohio State University School of Law, and was admitted to the Ohio Bar in 1988.

He is a member of the Columbus, Ohio State and American Bar Associations, as well as, the Ohio Municipal Attorneys Association and the International Municipal Lawyers Association. An active, long-time Westerville resident, he is president-elect of the Westerville Sunrise Rotary Club. He is also Westerville's former Prosecutor and Assistant Law Director.

Gene and his wife, Jessica, have three children.

New Riffs Over TIFs

The budget bill process brought with it significant changes in the way that communities and businesses can cooperate to spur economic development. In particular, the role of the school district in the process of granting economic incentives has taken center stage, as the Legislature continues to wrestle with how best to fund Ohio's schools. Responding to certain perceived abuses of tax increment financing ("TIF") districts for residential developments, the General Assembly for the first time will require school districts to declare compensation received from communities and employers arising from abatement or TIF agreements. In many instances, declaring such revenue will adversely affect the school district in terms of the "school funding formula" for state aid.

What is the upshot of the changes to abatement and TIF laws? For some communities, the new law led to a flurry of activity to create TIF's that could include residential development before January 1, 2006, when the new rules requiring

the school funding formula become effective. For nearly every community and employer who is contemplating expansion of facilities or new hiring, the upshot is simply that a closer examination of the abatement and TIF laws may be necessary and, in fact, may confirm that many opportunities still exist to incentivize economic development.

Because the level of incentives that a community can offer (or even the availability of incentives themselves) is often related to the amount of compensation necessary to ensure that the school district is "made whole," confusion is likely to reign until instructions are provided by the State about the new wrinkles in the school funding formula. In fact, it may become necessary to restructure "make whole" agreements or rescind them altogether. This may slow the process of negotiating incentives but, very simply, the right economic development package can benefit not only the employer and the community, but also the school district.

For instance, compensating

the schools through the statutory formula for income tax sharing (as opposed to a compensation agreement) may not need to be declared in the school funding formula. Moreover, it appears that TIF's that do not include residential development may be largely unaffected by the legislative changes. Unfortunately, however, other types of incentive programs for commercial and office projects, including real property tax abatements and enterprise zones, were swept in with the residential TIF's. Until the dust settles, the percentage and length of these nonresidential incentives may be less than communities were willing to offer in the past.

In summary, the economic development tools still exist but, due to the State's continuing struggle to find ways to fund schools, more time and attention to the details of economic incentive deals may be necessary to design a package that is mutually beneficial to the employer, the community and the various taxing entities involved.

By Eugene Hollins

ESTATE & HEALTH CARE PLANNING

Is It Time For A Checkup?

Putting in place or updating estate and health care planning documents rarely makes it to many of our "to do" lists. Not every person needs a complex plan, but everyone should have some plan in place in the event of disability or death. Most plans include a Will, Advance Health Care Directives and a business type Power of Attorney.

Even if planning documents are in place, life-altering events and significant changes in federal and state laws will likely affect previous decisions.

Consider the following, and then decide if a checkup is in order:

- Without a Health Insurance Portability and Accountability Act (HIPAA)

release in place, many health care providers will not even discuss a spouse, child or parent's medical condition with a close family member, even if the patient has a Living Will and a Health Care Power of Attorney.

- New rules on IRA and Qualified Plan distributions are very taxpayer favorable - if proper designations are made. Careful thought should be given to your beneficiary designations to maximize the tax-deferred status of inherited IRAs.
- The federal estate tax exemption increases to \$2 million dollars in 2006. The estate tax is scheduled for total repeal for one year in 2010, but will come roaring back in

2011 with re-imposed taxes on the estates of people who certainly do not consider themselves wealthy.

- In light of a new Ohio law that allows Medicaid recovery claims to be made against both probate and non-probate assets, careful consideration needs to be given to how your assets are titled, and the tax basis of your various assets.

So, is it time for a checkup? With a minimal amount of time and expense, we can help assure that your estate and health care planning wishes are made known and followed in the most favorable tax and cost effective manner.

By Richard Bringardner

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