To Plow or not to Plow – Associations' Obligations and Potential Liability for Snow Removal

Illinois law does not require that a land owner or manager remove snow or ice from her property. Further, many owners are hesitant to do so under the belief that they may become liable if someone slips and falls due to their imperfect attempts to clear sidewalks or drives. However, under the Illinois Snow and Ice Removal Act, 745 ILCS 75/1 *et seq*., an owner shall not be liable for personal injuries caused by snowy or icy conditions on a sidewalk unless the the owner acted in a willful or wanton way. This protection covers not just property owners, but also property managers and agents of the property owner. While, on its surface, the Snow and Ice Removal Act sounds like an almost sure protection against a slip and fall, there remain various ways for an association to be held responsible for a slip and fall caused by snow or ice, so associations should remain vigilant.

Initially, an association's governing documents or local ordinances or codes may require snow and ice removal. It is common for homeowner association declarations to specifically require the board to remove snow to keep drives and sidewalks in "good condition." Even if such a specific obligation is not included, associations are obligated to maintain the common elements. Boards have a duty to follow their association's governing documents, and it could be a basis of liability for an association to allow snow to remain when a declaration mandates that the board have it removed. Local codes often go further. For example, Chicago property owners are obligated to shovel snow as soon as possible after it falls, having it cleared by 10:00 a.m. for overnight snow, and 10:00 p.m. for daytime snow, seven days per week.

In addition, there is no immunity under the Snow and Ice Removal Act for defective conditions or negligent maintenance of a property. That means, for example, that if a defective drain allows a buildup of ice, and someone slips and falls on that ice, the association can be found liable for failing to repair the defective drain, allowing the ice accumulation.

In short, associations should review and understand their obligations for snow and ice removal, and for general property maintenance, under their governing documents, and under village and city codes and ordinances. Even in the absence of a direct mandate to remove snow and ice, associations should maintain association property in good, safe condition, which will generally include ensuring that sidewalks and drives are safely passable for its residents. So long as such snow and ice removal is performed in a reasonable manner, the association will be saved from liability under Illinois law. Further, associations should ensure that their snow removal contractors are properly licensed, bonded and insured, to protect the association in the event of faulty work. For this reason, it is recommended that all snow removal contracts be reviewed by legal counsel before they are executed.

U.S. Department of Housing and Urban Development Issues New Guidelines for Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

HUD issued new guidelines regarding an individual's right to utilize an assistance animal. The new guidelines are effective as of January 28, 2020 and directly impact residential associations as "housing providers" under the FHA. The new guidelines set forth a specific suggestions and limitations for questions an association may ask and/or documents an association may request to determine the legitimacy of non-observable or otherwise unknown disabilities, and confirming that an animal assists the applicant in living with her disability such that an association must allow a rule exemption or other reasonable accommodation. Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, an association should engage

in a good-faith dialogue with the requestor called the “interactive process.” An association may not insist on specific types of evidence if information about an applicant’s disability is already known to the association. Disclosure of details about the diagnosis or severity of a disability or medical records or a medical examination cannot be required.

Of note, the new guidelines confirm that a certification from an online source rather than a healthcare or mental health provider is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal. In other words, without additional documentation, a certificate from a website offering to “certify your pet as an assistance animal in 24 hours!” will not require accommodation. In addition, the guidelines affirm that there is a higher bar for requests for assistance animals that are not considered usual household animals. Specifically, if the individual is requesting to keep a unique type of animal, then the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal.

All associations are encouraged to have their animal policies reviewed to ensure that they comply with the new guidelines.