

COLUMN

# Ask a lawyer: Can a homeowner be held liable if someone falls on a snow-covered or icy sidewalk?

**Question:** Given the current time of the year, with icy roads and sidewalks, I shovel my sidewalks every time it snows. I do the same for my two elderly neighbors. So my question is, "Is a homeowner responsible, liable, if an individual slips and falls on a snow covered or icy sidewalk?"

The short answer is, there is a solid legal argument to hold a homeowner liable, within the city of Hermiston, if someone slips and falls (plus an injury) on the homeowner's sidewalk.

Here's why: Failing to maintain a sidewalk, in this case failing to keep the sidewalk clear of snow/ice, creates an issue of negligence. There's two basic types of negligence I'll discuss briefly, plain old negligence (ordinary negligence); and what is known as Negligence Per Se (a legal doctrine in Oregon whereby an act is considered negligent because it violates a statute or regulation/ordinance).

Let's first look at negligent conduct (ordinary negligence), as reviewed in the Oregon State Bar Books and jury instruction:

"The law requires every person to use reasonable care to

avoid harming others. A person's conduct is negligent if that person fails to use reasonable care.

Reasonable care is the degree of care and judgment used by reasonably careful people in the management of their own affairs to avoid harming themselves or others. A person fails to use reasonable care when that person does something that a reasonably careful person would not do, or fails to do something that a reasonably careful person would do under similar circumstances.

In deciding whether a person used reasonable care, consider the dangers apparent or reasonably foreseeable when the events occurred. Do not judge the person's conduct in light of later events; instead, consider what the person knew or should have known at the time.

The law assumes that all people have obeyed the law and have been free from negligence. The mere fact that an accident or injury occurred is not sufficient by itself to prove negligence. It is, however, something you may consider along with other evidence."

Elements of negligence:

1) The defendant's conduct was negligent (see above);

2) The defendant's negligent conduct was a cause of harm to the plaintiff; and

3) The harm was reasonably foreseeable.

This analysis of course does not consider issues of comparative fault. In modified comparative fault, the plaintiff only recovers if they are found 50% or 51% at fault or less. Oregon has a modified comparative negligence law. But the question presented was, "...is the homeowner liable," which I take to mean more, "can a homeowner be liable?" which is, yes, a homeowner can be liable.

The second, and more interesting question, is violation of Negligence Per Se.

City of Hermiston code of ordinances can help shape negligence per se arguments. Here, if the homeowner is found to have violated a city ordinance, they can be liable for negligence, simply by violating the ordinance.

Example: If you find that the defendant (homeowner) violated this ordinance, the defendant's conduct was negligent, unless the defendant proves that he or she was acting with reasonable care under the circumstances.

The important ordinances in Hermiston to consider:

130.05 ENDANGERING PEDESTRIANS.

(A) It shall be unlawful for

*"PLEASE MAKE SURE TO KEEP YOUR SIDEWALKS CLEAR OF SNOW AND ICE AS INCLEMENT WEATHER APPROACHES. YOU'LL NOT ONLY AVOID LIABILITY, YOU'LL PERFORM YOUR CIVIC DUTY!"*

the owner, lessee or occupant of any building or structure to suffer or permit rain water, ice or snow, which has accumulated on the building or structure of such owner, lessee or occupant, to fall from such structure onto a sidewalk or other public way.

(B) The offense described in this section, endangering pedestrians, is a Class C violation.

94.10 REMOVAL OF ICE AND SNOW.

It shall be unlawful for the owner, lessee, occupant or person having control or custody of any premises or unimproved property to allow snow or ice to stand upon any sidewalks abutting upon the premises or property for a period longer than two hours after the snow or ice has ceased to fall thereon; provided, however, that if the snow is falling or the ice accumulating after the hour of 6:00 p.m., the same shall be removed within two hours after 7:00 a.m. on the next day.

(Ord. 1976, passed 10-26-98)

Penalty, see § 94.99

What this shows us in Hermiston is that a homeowner may violate city ordinance if they fail to keep snow/ice from accumulating on their sidewalk; and if a person is hurt, the homeowner may be liable under a legal theory of negligence per se.

Thank you for helping your elderly neighbors; and my fellow citizens of Hermiston, please make sure to keep your sidewalks clear of snow and ice as inclement weather approaches. You'll not only avoid liability, you'll perform your civic duty!

For more information on city of Hermiston codes please visit: <https://www.codepublishing.com/OR/Hermiston/>

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