

REAL ESTATE WEEKLY

Who's in charge when ice is falling?

By **REW Staff**

5:41 PM, JANUARY 28, 2014

**By Adam Leitman Bailey and John M. Desiderio,
Adam Leitman Bailey, P.C.**

So far this winter, New York City has had two severe snow-falls, with accompanying frigid temperatures, and it appears that this weather pattern is likely to hold through the end of February.

As a result, snow and ice is accumulating on the roofs and ledges of buildings throughout the City and, therefore, when the weather begins to warm, chunks of ice



and snow will start falling from those heights to the streets and sidewalks below. Possible injury to persons and property may follow.

The City Administrative Code requires that owners maintain all buildings and parts of buildings in a safe condition.

In addition to this general requirement, the law also imposes a specific duty upon building owners to ensure that pedestrian passersby are not injured from snow or ice accumulations falling from their buildings.

Owners whose buildings have roofs, ledges, or cornices on which accumulated snow and ice is likely to pose a danger to persons and property below must take reasonable steps to prevent ice from falling to the street.

For this purpose, owners can install snow guards which, typically, are not intended to completely hold back the snow, but rather to separate the snow and allow it to



break apart in small sections in rising temperatures and thawing conditions.

For buildings where it is not possible to prevent snow and ice from falling to the street, owners must at least rope off the sidewalk or in some other

way warn pedestrians to not walk on the sidewalk adjoining their building until it is safe to do so.

In those situations where pedestrians are injured by falling snow and ice, the courts look to see whether the building owner had knowledge of the ice and snow condition that caused the injury.

Evidence of the building's history of ice and snow accumulation and of the owner's actual knowledge of that history is highly relevant, especially if the owner has not taken steps to prevent a dangerous condition from occurring.

But, even in cases where the owner was not aware of the actual snow and ice condition that caused the injury, courts may hold the owner responsible if it can be shown that the owner had constructive knowledge of the condition that caused the injury.

For example, in one case, the court held that, because the snow and ice had accumulated upon a ledge overhanging the sidewalk for a period of at least eight days, a jury would be permitted to decide whether the owner knew or should have known of the existence of the condition.

Whether or not building owners have taken reasonable steps to maintain their buildings to prevent snow and ice from falling to the street will generally be determined by the particular facts in each case. What may be considered lawful and reasonable under some circumstances may be found unlawful and unreasonable under other circumstances.

An owner may be insulated from liability for an injury that occurs while a storm is in progress. However, if it can be shown that the injury occurred because the owner had previously failed to properly maintain the section of the building at which the falling ice and snow had accumulated, the owner will not escape liability to the injured party.

For example, if the building's snow guards were defectively installed or had sections missing at the point from which the snow and ice fell to the street, the owner would still be liable even though the ice fell during the height of the storm.

Liability for injuries to pedestrians or to neighboring property caused by falling ice and snow will generally lie only against the owner of the building from which the ice fell.

A pedestrian's claim against the owner's architect (for faulty building design) or against the owner's snow guard installer (for defective installation or repair) is likely to fail because the pedestrian will have had no contractual relationship with either of them. However, the building owner can claim indemnification against the architect and/or the installer under the terms of their respective contracts.

Accordingly, building owners should now be taking action to detect the areas of their buildings at which snow and ice has been accumulating and then either (a) ensuring that the necessary protections are in place and secure or (b) removing the snow and ice before there is any possibility of a dangerous condition arising.

Alert building owners who act conscientiously will likely prevent the accidents and injuries that might otherwise be caused by falling snow and ice during this winter season.