

Managing Your Risk

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Contract Issues

- The Maintenance Responsibility Starts with the Occupier under the *Occupier's Liability Act*
- The Owner/Property Manager/Client will be an Occupier under the *Act*

The Contract and Scope of Work

- The Owner/Property Manager/Client can assign under a Contract some of its responsibilities under the *Act*
- The Contractor becomes responsible to meet the obligations he assumed under the Contract

The Contract and Scope of Work

- The Contractor is not responsible to do work, undertake tasks or assume risk unless he has, *either expressly or by implication*, agreed to do so under the Contract
- It is accordingly *critical* that the Contractor properly describe the Scope of Work in the Contract

The Contract and Scope of Work

- **The Vague or Overreaching Scope of Work:**
 - Promising the Unknown
 - Promising the Impossible
 - The “open by” Undertaking
 - The problem of the “Second Pass”
 - Assuming Responsibilities Voluntarily

The Contract and Scope of Work

Specifications / Schedules / Site Plans

- Site Plans *Must Be Used!!!*
- These Should be Made a Schedule
- Particular Limitations / Issues Can
and Should be Addressed in the Site Plans

The Contract and Scope of Work

- Improperly Maintained Premises
- Snow Stockpiling and Removal
- Parked Vehicles
- Severe weather conditions?
- Stop work orders
- Strikes, lock-outs, etc.
- The Use of Acknowledgments

Discretion to Use Ice Melters

- Contracts should clarify the contractor's obligation to use ice melting products
- Determine *who* makes the decision about the application of ice melting products...
- ... either it is the Contractor or the Client

Discretion to Use Ice Melters

- If Owner makes the decision, the contractor's *sole responsibility* is to apply product as directed.

Discretion to Use Ice Melters

- If the Contractor makes the decision, the Owner must pay the Contractor for whatever ice melting products are applied in the Contractor's discretion ...

Discretion to Use Ice Melters

- If the Contractor makes the decision, the Owner must pay the Contractor for whatever ice melting products are applied in the Contractor's discretion ...
- ... and the Contractor must implement a system to properly exercise that discretion

Discretion to Use Ice Melters

- Contractor's must take this responsibility seriously
 - A system to monitor weather and conditions
 - A system to deal with freeze and thaw cycles
 - A system to deal with problem areas
 - As system to confirm the system was followed!

Hold-Harmless & Indemnification

- Indemnification should only occur where the contractor breaches the contract or is negligent in the performance of his work as specified
- Indemnification should also be limited to damages for personal injury or property damage, and to the limits of the Contractor's insurance

Record Keeping Issues

- A Good Contract details what the Contractor is hired to do for his money
- A Good Contract is *worthless* if the Contractor is unable to show that he *did what he was hired to do*, in the event of a slip and fall!

Record Keeping Issues

- Contractors **MUST** Keep Detailed Records of the Work Performed
- Contractors **MUST** Keep Detailed Records of the Training of Employees and Subcontractors

Record Keeping Issues

- The More Detailed the Site Records the Better!
 - Time and location of work;
 - Salt distribution;
 - Conditions
 - Obstructions and other Issues

Record Keeping Issues

- [Sample Winter Maintenance Record Keeping Log - 1.pdf](#)

SAMPLE SALT TIMESHEET

DATE: _____ OPERATOR: _____

START TIME: _____ FINISH TIME: _____ TOTAL: _____

AREA COVERED: F.L. = full lot $\frac{3}{4}$ $\frac{1}{2}$ $\frac{1}{4}$ SA = spot application

RATE: L = Light (2.7kg/sec) M = Medium (3.8kg/sec) H = Heavy (4.8kg/sec)

ADDRESS	TIME IN	TIME OUT	SPREAD TIME	RATE	AMOUNT APPLIED	NOTES
55 Main St.	10:15pm	10:20pm	4 mins 5 sec	M	931 kg	F.L.

SALT LOAD	TAKEN FROM	AMOUNT (tons)	TIME
1			
2			
3			
4			
5			
TOTAL			

Record Keeping Issues

- [Sample Winter Maintenance Record Keeping Log - 2.pdf](#)

NAME: Ralph DATE: _____ TRUCK#: _____
 START TIME: _____ END TIME: _____ TOTAL: _____

OTHER EMPLOYEES:

NOTES:

WEATHER:
 TEMPERATURE: _____
 ICE: _____ SNOW: _____ ACCUMULATION: _____
 ROAD CONDITIONS: _____

SITE	TIME - START	TIME - FINISH	Salt Application Area Covered				Roads /Parking Lot Amount of Material			De-icing Walkways Amount of Material			Snow Removal		
			FULL	3/4	1/2	1/4	Low	Medium	High	Salt	Ice Melter Off Truck	Ice Melter From Site	PLOW	SHOVEL	
145 George Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
162 George Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
180 George Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
132 Richmond Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
140 Richmond Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
10 Fredrick Street			FULL	3/4	1/2	1/4								PLOW	SHOVEL
20 Fredrick Steet			FULL	3/4	1/2	1/4								PLOW	SHOVEL
			FULL	3/4	1/2	1/4								PLOW	SHOVEL
			FULL	3/4	1/2	1/4								PLOW	SHOVEL

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