

# I Fell On An Icy Sidewalk And Was Injured. What Are My Legal Rights?

---

February 20, 2014 | by Christopher Musmanno

**Dear Ask the Attorney:**

**I slipped and fell on ice on a sidewalk this winter and was injured. What are my legal rights?**

**W.D.**

Dear W.D.:

At this time of year, given the severe weather of snow and ice, it is not uncommon for someone to slip and fall on ice.

The law governing sidewalk liability in New Jersey has changed from 1981 to the present. The Supreme Court of New Jersey has rendered several opinions requiring classification between residential and commercial property owners. For three decades, the courts have embraced the fundamental notion that residential property owners are not liable for sidewalk injuries. The Supreme Court has consistently reflected that residential property owners differ from commercial property owners who have the ability to spread the cost of loss that an innocent third party may suffer. Commercial land owners are responsible for maintaining, in reasonably good condition, the sidewalks abutting their property and are liable to pedestrians injured as a result of their negligent failure to do so.

As a result, before determining whether a duty to maintain a sidewalk exists, one must first discern whether the property in question is commercial or residential. Commonly accepted definitions of “commercial” and “residential” property should apply according to the Supreme Court. For example, an

apartment building is considered “commercial”. The Supreme Court later expanded the obligation to maintain public sidewalks abutting commercial properties to include snow and ice removal. There have been several cases that attempt to distinguish between what is and is not “commercial” v. “residential” property. The courts have employed a classification method to resolve the “commercial” and “residential” distinction. The objective in creating the commercial property exception to the no liability rule was to impose liability upon the party in a better position to bear the costs associated with that imposition. Thus, when determining abutting sidewalk liability, courts focus on whether the property is commercial or residential.

If the property is owned for investment or business purposes, the property is classified as commercial. Therefore, a one family residence is classified as commercial where the owners did not occupy that property but, instead, rented it to their adult daughter and did not intend to retain the property at the expiration of the lease. A two family property may be classified as commercial where neither apartment was owner-occupied.

Questions arise when a property is owned by a religious or charitable or other non-profit organization. In that instance, courts look to the nature of the use of the property and not the nature of the ownership. Recent decisions, when attempting to distinguish whether a property is commercial or residential, recognizes that the examination must be focused on the use of the property and not the nature of the ownership. It becomes somewhat blurry when attempting to examine whether certain non-owner and owner-occupied single and two family structures are residential. It is clear that the courts, as well as attorneys, continue to grapple with the commercial-residential distinction. However, the one thing that is constant throughout the decisions is the recognition that there is no bright line rule. The court engages in a balancing of the relevant tort law considerations with an eye towards determining whether the imposition of duty on land owners is rational and fair.

I have extrapolated certain themes from the numerous cases regarding sidewalk liability law in New Jersey and the residential -commercial distinction:

- The first theme is that the court has acknowledged that residential property owners are generally not liable for sidewalk injuries.

- The second theme is that the court has maintained the fundamental notion that commercial property owners are better prepared to spread the risk of loss to innocent third parties than residential home owners.
- The third theme is that the residential-commercial distinction requires a case by case, fact sensitive analysis which requires an experienced attorney in that area of the law.
- The fourth theme is that the courts seem to use commonly accepted definitions of “commercial” and “residential” to resolve the residential-commercial distinction.
- The fifth theme is in determining whether an owner occupied two or three family home is deemed “residential” or “commercial, “ courts have considered the nature of the ownership of the property and the predominate use of that property.
- Finally, the sixth theme that comes from all of the cases in this area of the law is that the commercial-residential framework, even in the gray area of owner/occupied two and three family structures, continues to provide guidance and predictability for property owners.

As one can see, the law in New Jersey is extremely complicated when attempting to analyze whether there is liability to the owner of a side walk when an innocent third party slips and falls on ice.

Therefore, if you are injured, you should seek a Certified Civil Trial Attorney well versed in Personal Injury Law.