

**8030 DUTY OF OWNER OF A BUILDING ABUTTING ON A PUBLIC HIGHWAY**

An owner of a building abutting a public (highway) (sidewalk) must use ordinary care to see that those portions of the building which might cause injury are in reasonably safe condition and will not endanger the safety of persons lawfully using the (highway) (sidewalk) or who deviate from it in the ordinary course of travel where such deviation is reasonably foreseeable.

While an owner is not required to guarantee the safety of the public using the (highway) (sidewalk), the owner has the duty to use ordinary care and skill in the construction and maintenance of his or her building.

Ordinary care requires the owner of a building to make such inspection of the building as is reasonably required to guard against dangerous effects of deterioration from natural or other causes. These inspections must be frequent and thorough enough to determine existing conditions.

**COMMENT**

The instruction and comment were approved in 1974 as Wis JI-Civil 1028. The instruction was revised and renumbered in 1985. Editorial changes were made in 1994. No substantive changes were made to the instruction. The comment was updated in 2005.

If the defendant is not the owner of the building, substitute "one in control of" for "an owner" and "such person in control" for "such owner."

Weiss v. Holman, 58 Wis.2d 608, 207 N.W.2d 660 (1973). Lee v. Milwaukee Gas Light Co., 20 Wis.2d 333, 338, 122 N.W.2d 374 (1963); Delaney v. Supreme Inv. Co., 251 Wis. 374, 29 N.W.2d 754 (1947); Majestic Realty Corp. v. Brant, 198 Wis. 527, 244 N.W. 743 (1929). 25 Am.Jur. Highways § 364 (1940); 7 A.L.R. 204 (1920); 138 A.L.R. 1078 (1942). See also Restatement, Second, Torts § 368 (1965).

The circumstances of the case may be such as to warrant the application of the doctrine of res ipsa loquitur. See Lee, supra at 338-39.

If the liability arises from something other than a building, such as a falling tree, substitute "premises" for "building." In Schicker v. Leick, 40 Wis.2d 295, 162 N.W.2d 66 (1968), mud was carried from the premises onto the highway.

**Icy Sidewalk.** When a properly working downspout built in the ordinary and usual manner discharges water upon the property and the water finds its way to the public sidewalk because of the natural slope and topography of the land, the resulting runoff onto the sidewalk is a natural condition for which the property owner incurs no liability. Holschbach v. Washington Park Manor, 2005 WI App 55 ¶ 1, 280 Wis.2d 264, 694 N.W.2d 492.