



SMITH JADIN JOHNSON
PLLC

Integrity. Honesty. Tenacity.

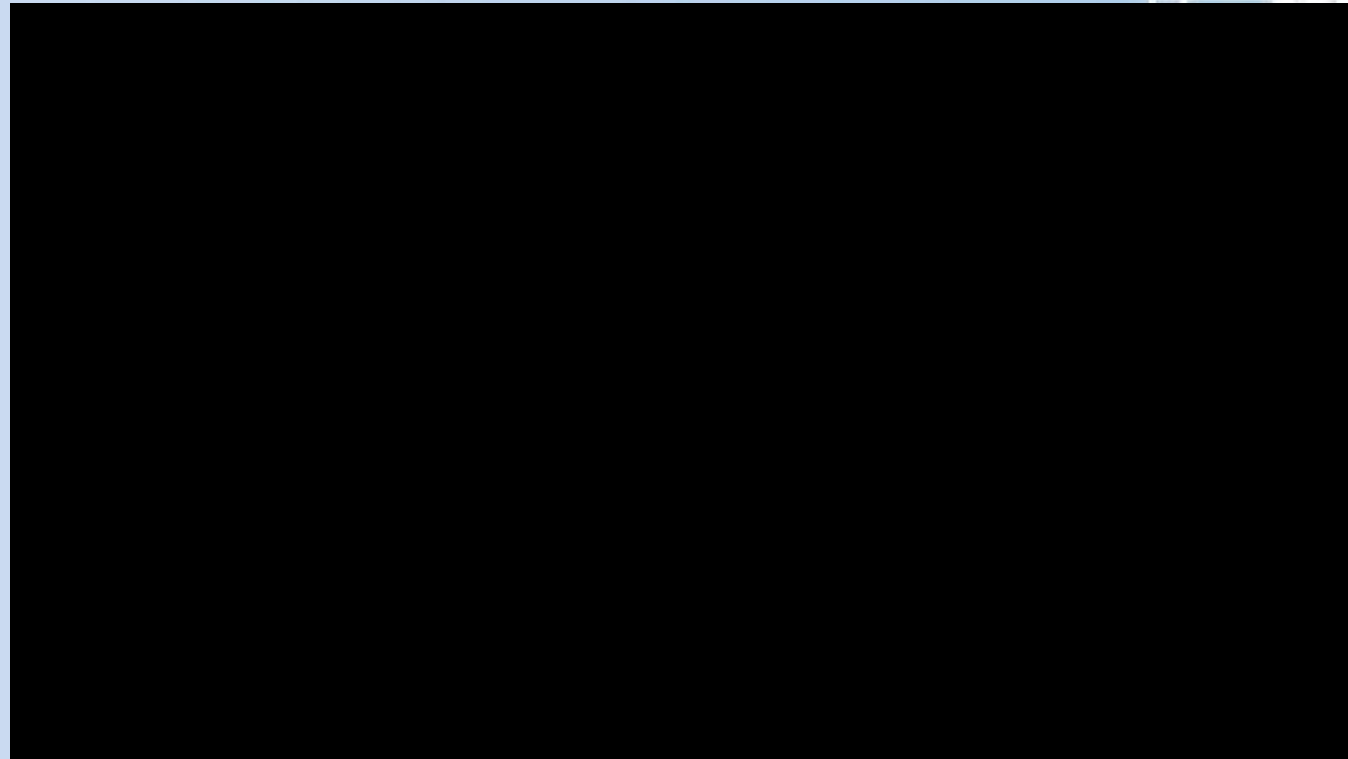
Let It Snow!

**Surviving Winter with
Style and Grace**

Anthony T. Smith
(952) 388-0289
asmith@sjjlawfirm.com
www.sjjlawfirm.com

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Minnesota: Like *Game of Thrones*, Without the Dragons.



Make Your Winter “To Do” List.

1. Understand your duties and responsibilities.
2. Hire a snow removal company.
3. Respond to concerns of “problem areas.”



Common Law Duties

- Landowners generally have a common law duty to use reasonable care for the safety of all entrants onto their land.
- This includes an ongoing duty to inspect and maintain the property free of unreasonable risks of harm.
- If a dangerous condition on the premises is discoverable through reasonable efforts of the landowner, the landowner must either repair them or warn entrants of their existence.



Contractual Duties

- An association (and its board) also has a contractual duty to maintain its property.
- The Declaration is a contract between an association and its members.
- Associations have to perform the maintenance specified in the Declaration.



Contractual Duties

- Typical maintenance language found in an association's Declaration:

Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall provide for exterior maintenance upon the Units and Dwellings as follows: (i) replace roofs, gutters, downspouts, garage doors, and exterior siding and other building surfaces, (ii) provide for lawn, shrub and tree maintenance on all Units, except for watering; and (iii) provide for snow removal from the driveways, sidewalks, and stoops.



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Statutory Duties

- An association (and its board) covered by the Minnesota Common Interest Ownership Act also has a statutory duty to maintain its property:

Except to the extent provided by the declaration . . . the association is responsible for the maintenance, repair and replacement of the common elements, and each unit owner is responsible for the maintenance, repair and replacement of the unit owner's unit.



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Speak English, Short Bald Man!

- An association has a duty to keep its common elements free from ice and snow, and could be liable if someone slips and gets hurt.
- That happens more often that you'd think!

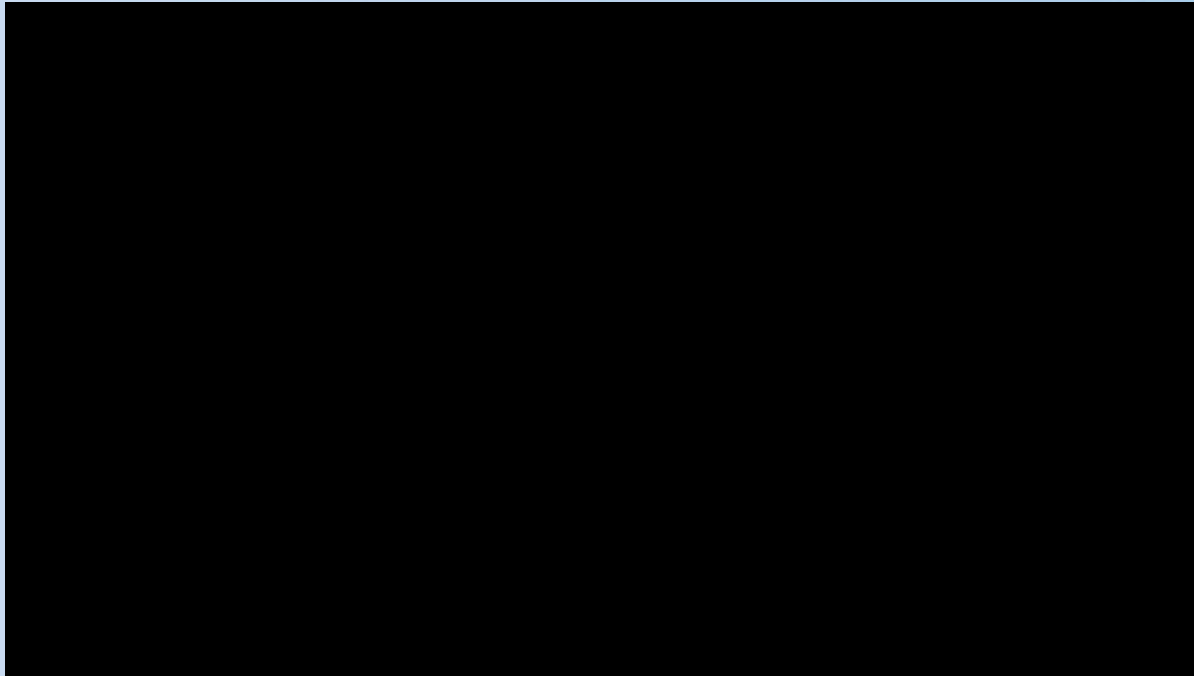


Exhibit A:



What's an HOA to Do?

- Contract with a reputable, qualified snow removal vendor!
(Note: NOT this guy.)



Things to Consider:

- Make sure the vendor is insured.
- The snow removal contract should cover all areas the association is required to maintain.
- The snow removal contract should clearly and unambiguously specify how and when the vendor's duty to plow and/or shovel is triggered. (Ex.: "We'll come out and plow if more than 2 inches of snow falls within a 24-hour period.")



Things to Consider:

- The snow removal contract should require the vendor to promptly plow and/or shovel after a snowfall. (Ex.: “We will respond to a snowfall covered by this contract within 24 hours after the snowfall stops.”)
- The snow removal contract should clearly and unambiguously specify how the vendor is to be paid. (Ex: “The association will pay us a flat rate of \$_____ per month for snow removal services rendered in connection with snowfalls that occur between October 31, 2018 and April 15, 2019.”)

^^^^ THIS IS THE ONE THAT CAN TRIP YOU UP ^^^^^



Things to Consider:

- The snow removal contract should require the vendor to pay to repair any damage it causes to the property of the association and its members.
- An association should never agree to insure, defend, or indemnify its snow removal vendor for injury or property damage resulting from its work. Snow removal is risky business.



An Ounce of Prevention...

- Consider having an attorney help your association in reviewing and negotiating your snow removal contract. It could save you some headaches down the road.



Questions



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