

KOPELMAN AND PAIGE, P.C.

MEMORANDUM TO MUNICIPAL CLIENTS

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I. Repairs to Private Ways

A. Statutory Requirements

As a preliminary matter, it should be noted that temporary repairs to private ways are governed by Mass. G.L. c.40, §6N which provides that:

"Cities and towns may by ordinance or by-law provide for making temporary repairs on private ways. Such ordinance or by-law shall determine (a) the type and extent of repairs; (b) if drainage shall be included; (c) if the repairs are required by public necessity; (d) the number or percentage of abutters who must petition for such repairs; (e) if betterment charges shall be assessed; (f) the liability limit of the city or town on account of damages caused by such repairs; (g) if the ways shall have been opened to public use for a term of years; and (h) if a cash deposit shall be required for said repairs."

B. Liability

Liability with respect to such ways is further governed by Mass. G.L. c.84, §§23, 24 and 25.

Mass. G.L. c. 84, §23 provides:

"A way opened and dedicated to the public use, which has not become a public way, shall not, except as provided in the two following sections, be chargeable upon a town as a highway or town way unless laid out and established in the manner prescribed by statute."

The section has been said to have as its primary purpose, the restriction of liability of municipalities subject to the following two sections. Dakin v. Somerville, 262 Mass. 514 (1928). Thus the way must first be found to be "opened and dedicated to the public use" before liability becomes an issue. If so, that liability will be governed by the following two sections. Oliver v. Worcester, 102 Mass. 489 (1869).

Mass. G.L. c.84, §24 provides:

"The board or officer having authority over public ways in a town shall, if the public safety so requires, cause such ways to be closed where they enter upon and unite with an existing public way or may by other