

Chapter 122

NOTIFICATION OF DEFECTS

§ 122-1. Written notification required.

§ 122-3. Record of written notices.

§ 122-2. Transmittal of written notices.

§ 122-4. Construal of provisions;
severability.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland 3-11-1985 by L.L. No. 1-1985. Amendments noted where applicable.]

GENERAL REFERENCES

Defense and indemnification — See Ch. 15.

Removal of snow and ice — See Ch. 156, Art. I.

§ 122-1. Written notification required.

No civil action shall be maintained against the Town of Westmoreland or the Town Superintendent of Highways of the Town of Westmoreland, or against any improvement district in the Town of Westmoreland, for damages or injuries to person or property sustained by reason of any highway, bridge, culvert, sidewalk, or any other property owned by the Town of Westmoreland, or any property owned by any improvement district, being defective, out of repair, unsafe, dangerous, or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge, culvert, sidewalk, or any other property owned by the Town of Westmoreland, or any property owned by any improvement district, was actually given to the Town Clerk of the Town of Westmoreland or the Town Superintendent of Highways of the Town of Westmoreland, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, and no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert, sidewalk or any other property owned by the Town of Westmoreland, or any property owned by any improvement district in the Town of Westmoreland, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk of the Town of Westmoreland or the Town Superintendent of Highways of the Town of Westmoreland and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonable safe within a reasonable time after receipt of such notice.

§ 122-2. Transmittal of written notices.

The Town Superintendent of Highways of the Town of Westmoreland shall transmit, in writing, to the Town Clerk of the Town of Westmoreland, within 10 days after receipt thereof, all written notices received by him pursuant to this chapter.

§ 122-3. Record of written notices. ¹

The Town Clerk of the Town of Westmoreland shall keep an index record, in a separate book of all written notices which she shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice and snow upon any Town highway, bridge, culvert, sidewalk, or other property owned by the Town of Westmoreland or any of its improvement districts, which record shall state the date of the receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition, or the location of accumulated snow or ice. The record of each notice shall be preserved for a period of five years after the date it is received.

§ 122-4. Construal of provisions; severability.

- A. Nothing contained in this chapter shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these classes of actions but, on the contrary, shall be held to be additional requirements to the right to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence, nor to impose upon the Town of Westmoreland and/or any of its improvement districts any greater duty or obligation than it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.
- B. If any clause, sentence, phrase, paragraph or any part of this chapter shall for any reason be adjudged finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof directly involved in the controversy or action in which such judgment shall have been rendered.
- C. It is hereby declared to be the legislative intent that the remainder of this section would have been adopted had any such provisions not been included.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).