



Recreational Access and Liability: What Landowners Should Know

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In the past, farmers and forest landowners have not been overly concerned about liability laws and regulations that affect the use and management of their property. Increased demands for recreation by the public have prompted many landowners to develop recreational access programs, such as fee hunting operations, which provide limited access to the public and help supplement landowner income. One of the primary concerns of landowners who are interested in establishing a recreational operation like fee hunting is liability. When deciding on a recreational alternative for their lands, landowners almost always ask, "Am I liable for damages if someone gets hurt on my property?" In many cases liability concerns have been the deciding factor in whether or not private lands are opened for recreation. It is not uncommon for landowners to be reluctant to allow access to their property because they fear liability risks. However, many of these concerns are more perceived than real, since liability lawsuits against landowners for negligence in accidents are uncommon. Overt landowner concern over liability is more likely a reflection of living in a litigious society. However, this does not diminish the fact that liability concerns of landowners are real and should be recognized and understood by those who allow use of their land for recreational purposes by the public.

Landowners who allow recreational access can significantly reduce liability anxiety and risk exposure by understanding their legal responsibilities to the recreationists, meeting those responsibilities, and developing a sound program of risk reduction that protects both the landowner and land user.

Landowner Responsibility

Landowners have a legal and moral responsibility to insure that conditions and their property are safe for recreationists. Landowners interested in developing recreational operations should be aware of their responsibilities to the recreationist. In most states the level of landowner responsibility owed depends upon the classification of the recreationist.

For a landowner to be held liable for personal loss or injury, negligence must be proven. A landowner is most often held liable for gross negligence or willful misconduct, such as setting traps aimed at harming trespassers. Beyond any intentional bad actions, the landowner must be proven to have breached the duty of reasonable care expected under the law. In determining a landowner's liability for injuries that may occur to a recreationist on his property, the legal status

of the recreationist must first be determined. The duty of care owed to and expected by the recreationist, and thus the landowner's liability, depends on whether the recreationist is classified as a trespasser, licensee, or invitee. By law, the greatest degree of responsibility is owed to recreationist categorized as invitees with the least being owed to trespassers.

Trespasser

A trespasser enters land uninvited and without the consent of the landowner. Recreationists, such as hunters, must obtain permission from the landowner before entering the property. In some cases this permission can be implied. Usually, landowners are only liable for trespasser injuries that result from willful misconduct. An example of willful misconduct would be if the landowner set booby-traps with the intention of causing harm and/or death to the trespasser. Landowner responsibility goes one step further to children who are knowingly trespassing. In this case, landowners are required to exercise reasonable care to eliminate any dangers that pose an unreasonable risk of death or serious bodily harm to trespassing children. A key element excusing landowner liability is the lack of knowledge of the trespassers presence.

Licensee

A licensee enters property with the permission of the landowner and is not required to pay a fee or render a service for the right of access. In other words, licensees enter property to further their own purposes, not the landowners'. Recreationists who are friends, business acquaintances or family members are considered licensees. Landowners have a greater degree of responsibility to licensees than trespassers in that they have a duty to warn of known dangers. For example, a landowner must warn visitors of a biting dog, an open pit, or vicious animals.

Invitee

An invitee recreationist enters land for the benefit of the landowner and is required to pay a fee or provide a service in exchange for the right of access. However, the traditional "hunting lease" is often considered more like a licensee rather than an invitee situation. A hunter is more likely to be considered an invitee where a fee is charged on a per trip basis (e.g shooting preserve). The responsibility of the landowner to the recreationist increases, since a fee or service is required and the recreationist assumes that the property and other conditions are safe. Landowners engaged in a fee access operation must inspect their

property for hidden dangers and make every effort to warn of all known hazards. If known dangers cannot be removed, the landowner must give adequate warning to the recreationist and explain where these hazards are located.

Reducing Landowner Liability

Reducing landowner liability involves developing and implementing a sound program of risk reduction. In a fee hunting operation, for example, landowners should inspect their property for hazards (e.g. open wells, abandoned mines, unsafe structures, dangerous domestic/farm animals, etc.) and make every effort to eliminate these hazards. Known dangers which cannot be corrected should be identified and explained to sportsmen. In other words, every effort should be taken to make the hunting conditions and the property safe. Meeting these obligations, as defined by law, will reduce landowner liability exposure in fee access operations. Liability usually cannot be imposed upon the landowner without proof of negligence.

A key component of a risk reduction program is foreseeability — being able to anticipate potential problems and acting in advance to reduce or eliminate the occurrence of these problems. Foreseeability is a vital factor in reducing risks. Some actions that landowners should consider in reducing risks include the following:

1. Identify all known and potential hazards on the property. Recreationists should be given a plat of the property that marks hazards and identifies property boundaries. If possible, landowners should tour the property with recreationists.
2. Develop written rules aimed at preventing accidents and protecting the property. Make sure all recreationists are aware of the rules and regulations; have them sign a statement that they have read and understand all rules and regulations.
3. Have recreationists sign a hold-harmless agreement (written release) prior to entering the property, stating that the recreationist holds the landowner innocent of any consequences to the recreationist while on his or her land. The following example can be used as a guide:

I (We), the undersigned, do hereby assume all risks associated with hunting (and/or any other intended activity) and do hereby release (landowners name) and all their properties and their agents of any and all negligence.

Signed

Date

Written releases may be helpful as proof that an injured recreationist assumed the risks of engaging in an activity. It is important to note, however, that hold-harmless agreements do not relieve landowners of liability associated with demonstrated negligence. Releases should not be relied upon as a substitute for providing reasonable care to recreationists.

4. Although not a requirement, some landowners have gone so far as to require hunting clubs to have liability insurance coverage to minimize exposure to loss from accidents and other risks. Several insurance companies provide coverage for assorted recreational activities on private land. For a list of these companies contact your insurance company.
5. Avoid single strand wire gates. Make sure all gates are clearly marked.
6. Require that hunters provide references to verify safe behavior and adherence to game laws.
7. Post property against trespassing and prosecute violators.
8. Plainly mark and show safety zones (“no hunting” areas) around houses, buildings, livestock, etc.
9. Unsportsmanlike behavior should not be tolerated.
10. Require recreationist to obey all state and federal game regulations.
11. Encourage recreationists to exercise good judgement and common sense.
12. Keep accurate records of all efforts made to reduce or eliminate known and potential risks to recreationist. If a liability suit is filed, landowners will have an accurate record of efforts that were taken to make conditions and property safe.
13. Continually monitor risk potentials and make efforts to reduce them.

Recognizing that landowners provide a valuable service to the public by allowing recreational access to their lands on a free or fee basis, most states have enacted recreational use statutes that limit landowner liability for injuries to persons using the land for recreational purposes. These statutes do not exempt landowners from injuries caused by willful and malicious activities, or the failure of the landowner to warn against known hazardous conditions.

In some states, legal precedent for landowner liability has been dismissed through court rulings. In South Carolina, for example, an opinion (Opinion No. 1559) filed by the South Carolina Court of Appeals reaffirmed that landowners are not liable for natural conditions existing on rural land. In this particular case, the Court of Appeals ruled in favor of a rural landowner who was sued for negligence in the death of a worker who was killed when his tractor overturned on sloping terrain. Although unfortunate, this case clearly defines that in South Carolina, landowners are not liable for natural conditions on their lands.