

TIMBERLAND LIABILITY— ARE YOU AT RISK?

By Ed Wilson, Ph.D.

Today, many timberland tracts are being sold to private non-industrial landowners for recreational/investment purposes. Additionally, private landowners in the south have a long tradition of leasing their land to hunting clubs. In all cases, there is some legal liability attached to leasing or owning a timberland tract. A nationwide assessment of rural landowners' liability suggest that the legal threat to landowners is probably exaggerated, but landowners should be familiar with their specific state laws and incorporate safety and risk management principles into their operating plans (Hill and Kaiser, 1995).

Landowner Liability

The litigious nature of society has increased the timberland owners concern with the inherent liability attached to ownership of property. A landowner incurs some risk any time someone is on his or her property. Common law principles provide the legal parameters associated with the rights and duties of landowners. Under common law the degree of care required by a landowner is dependent on the classification of a person on your property:

1. **Trespasser:** a person classified as a trespasser has entered the land uninvited and has no right to be there. A landowner has the least responsibility to a trespasser but common law still holds some liability for injuries resulting from gross negligence and willful misconduct.
2. **Licensee:** A licensee enters the property with the landowner's permission but no fee is exchanged (example-a guest hunting on your property). Common law in this case looks for some duty to warn the person of any hidden dangers on the property.
3. **Invitee:** An invitee enters the land to the benefit of the landowner and a consideration is present for access to the property (example-hunting leases). In this case, common law looks for additional duties on part of the landowner and establishes that the landowner should inspect the property, remove hidden dangers, and warn the user of dangers.
4. **An attractive nuisance:** highest degree of care and usually involves children and a feature of the property attractive to children.

Recreational Use Statute

Landowners in most states have additional protection afforded to them under the Recreational Use Statute. Under this statute the landowner owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained permission to use the land for recreational purposes or to give any warnings of dangerous conditions. The liability by this statute is not limited for willful or gross negligence and the protection from

this **statute is lost if a fee is charged.**

A few states have broadened this recreational use statute to allow some fees for leases while still providing protection to the landowner. In Texas 2-4 times the property taxes can be charged and in Wisconsin revenues of less than \$2000 are allowed. Similar additions to other State's Recreational Statute would provide some additional defenses to landowners that make their property available to hunting leases. If the recreational use statute is not available, other legal defenses such as comparative negligence, liability waiver, and negligence absence may be employed.

Risk Management Techniques

Many techniques can be employed to reduce the risk associated with land ownership. To manage this risk a landowner can:

1. Remove known hazards and making guest aware of boundaries and other hazardous conditions.
2. Develop written releases for invitees and licensees that use the property for recreational purposes.
3. Establish written rules for specific activities conducted on your land.
4. Obtain liability insurance for your ownership or lease interest.

Liability insurance can be obtained for your ownership interest by including coverage with your homeowner's policy, as an addition to your business owner's policy, or separately under an Timberland owner policy. ***It is important to be sure your policy does not have exclusions specific to timberland management, such as logging or other type of activities common on timberland (logging & other forestry contractors).*** Landowner should also request to be listed on any contractors policy as an Additional Insured.

Hunting Leases

Many southern states are blessed with long deer-hunting seasons. The long season and abundant wildlife provides ample opportunities for hunters to pursue their sport, and for landowners to increase their income by leasing their property to hunting clubs. Some studies indicate that over 75% of the private land in the low country of South Carolina is leased for hunting purposes (Yarrow, 1992). Larger private landowners cite access control and public relations as the justification for their leasing programs. The demand for quality hunting land continues. Sweeten, (2003) reports a doubling of lease prices in some areas in the past 10 years. This additional annual income can have a very positive influence on the Net present Value of a forestry investment (Robinette 1989).

In South Carolina (as in several other states), if a landowner charges a fee for a hunting lease they lose the protection offered through the recreational use statute. To limit any additional exposure from a hunting lease arrangement a landowner should:

- 1) Understand the common law responsibilities-the landowner should inspect the property, remove hidden dangers, and warn the user of dangers.
- 2) Establish a formal lease with the club that provides written notification of hazardous situations and includes a map of the property that details boundary lines and hazardous conditions. Particular attention should be given to marking any gates or bridges on the land.

3) Develop written rules with the club that sets up regulations governing the operation of the club on the property.

Have guest and members of the club sign a written release.

5) Require hunting clubs to obtain liability insurance that lists the landowner as an additional insured landowner.

Conclusions

While liability concerns are valid they should not limit property access or recreational use. Lawsuits filed against landowners are infrequent. Landowners can employ some simple risk management techniques that limit their exposure to lawsuits and still provide ample recreational opportunities to their guests, friends or lessees. Some consideration should be given to changing the recreational use statute to provide some additional protection for landowners that charge a nominal fee for hunting purposes.

References

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