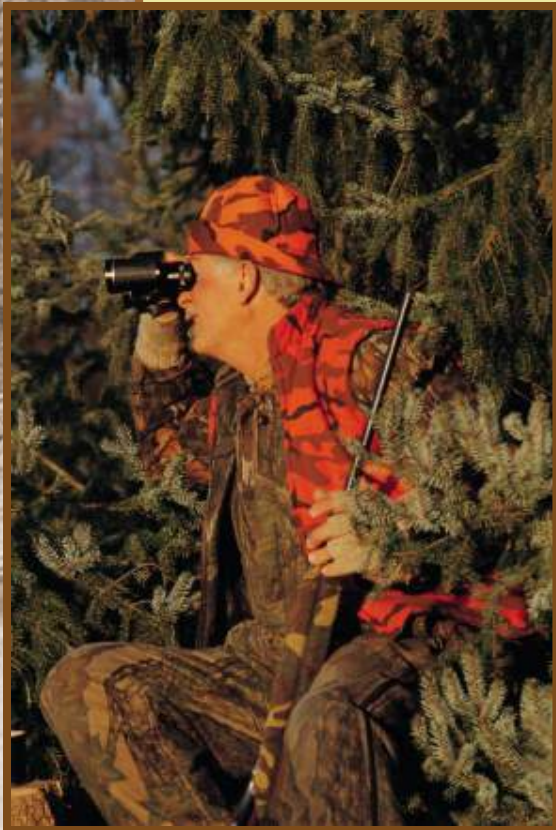


Hunting Leases, Associated Liability, and Appropriate Insurance

Deer Management In-Service
April 24, 2019

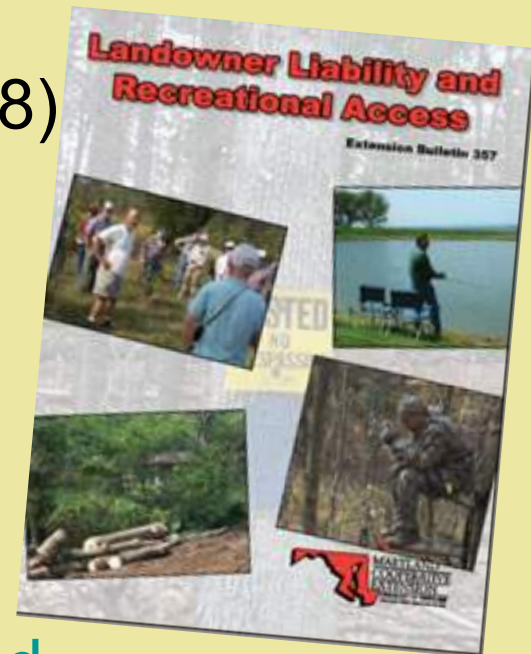
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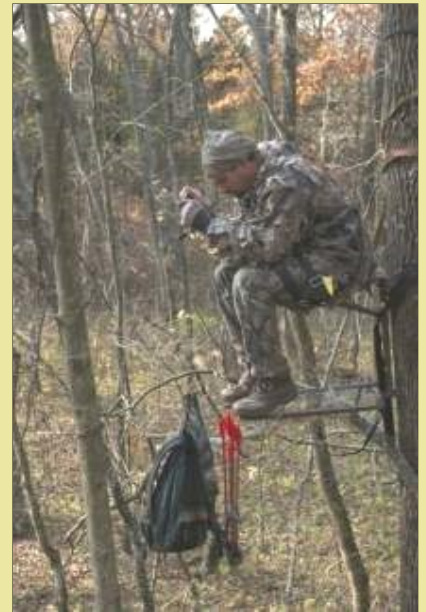


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Sources of Assistance

- Recreational Access and Landowner Liability (EB357)
 - Available free online (revised 2008)
 - Other information on hunting leases available under income opportunities
- Website:
 - www.extension.umd.edu/woodland







FAQs

- What are my rights, and how do I exercise them to control recreational use of my property?
- What is the extent of my liability to recreationalists, and how can I protect myself against liability suits?
- What are my options for posting my land and controlling trespass by recreationalists? How does it affect my liability?
- How do I charge for recreational access and still provide liability protection?
- What do I do if someone takes timber from my property without permission?

Liability



Perception

Reality


Excuse

Disclaimer: This presentation is not intended to be a substitute for counsel from a lawyer or insurance professional.




General Rules of Liability Descend from English Law

- Based on visitor's status.
- Degree of liability (duty of care) depends upon classification of visitor:
 - Without Permission:
 - Trespasser
 - With Permission:
 - Licensee
 - Invitee




Status of User with Permission Invitee

- Person specifically invited to enter the property for the benefit of the owner (business relationship).
- Highest duty of care.
- Duty to seek out, discover, correct, and prevent dangerous conditions or activities, and to warn the invitee of those that cannot be corrected.



Status of User with Permission Licensee

- Has the owners permission to be on the land to further their own purposes, with no particular benefit for the owner.
- Owner has the duty to warn, but not correct hazards. Owner has no duty to inspect the premises.



Status of User without Permission - Trespasser

- Trespasser - a person who enters or remains on the property without the permission of the owner.
- Landowner owes little or no duty to seek out, discover, or correct unsafe conditions.



Duty of Care

Increasing Difficulty to Prove

- **Negligence** - failing to exercise ordinary or reasonable care.
- **Willful** - behavior that falls between malicious actions and mere negligence. Problem greatest when a dangerous condition would have been discovered with only minimal inspection.
- **Malicious** - the intentional doing of a wrongful act without just cause or excuse with an intent to inflict injury. Behavior purposely intended to cause harm.



Status of User – The Problem

- Status of visitor and duty of care can change in each situation. Liability status can be uncertain.
- Creates little incentive for landowners to allow recreationalists to enter their property.

The Recreational Statute in Maryland

“The purpose of this subtitle is to encourage any owner of land to make land...available to the public for any recreational and educational purpose by limiting the owner’s liability.”

Annotated Code of Maryland

Natural Resources Article – Title 5-1102

The Recreational Statute in Maryland

- All visitors considered trespasser's.
 - Landowner owes little or no duty to seek out, discover, or correct unsafe conditions.
- Only applies if no fee is charged.
- Covers the entire range of recreational and educational activities.





Definition: Charge

Annotated Code of MD, Title 5-1101

- A charge is a price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go onto the land.
- Charge does not include:
 - The sharing of game, fish, or other products of recreational use:
 - Benefits to the land arising from the recreational use; or
 - Contributions in-kind or services to promote the management or conservation of resources on the land.

Clarification of Liability

Annotated Code of MD, Title 5-1104

“The owner of land who directly or indirectly invites, or permits without charge, persons to use the property for any recreational or educational purpose or to cut firewood for personal use does not by this action:

- 1. extend any assurance that the premises are safe for any purpose;*
- 2. confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or*
- 3. assume responsibility for or incur liability as a result of any injury to the person or property caused by an act of omission of the person or persons.”*



Liability for Willful or Malicious Conduct

Annotated Code of MD, Title 5-1106

“The provisions of this subtitle do not limit in any way any liability which otherwise exists for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;...”

- Malicious – behavior purposely intended to cause harm (traps, trip wires, etc.).
- Willful – behavior that falls between malicious actions and carelessness.

Point – You always have some liability!

Where does Recreational Statute Apply?

- Maryland Circuit Court of Appeals Upheld Recreational Statute in landmark case in 2002.
- Applies not just to rural properties.



Reducing Liability: Practice Risk Management





Reducing Liability: Carry Liability Insurance –

- Lawyer on retainer
 - legal defense cost against real and frivolous suits
 - Judgment awarded by the court
- Peace of mind.
- Make sure your provider knows what activities are taking place on your land.
- Conventional farm policies do not cover fee hunting relationships.

Developing a Lease Hunting Enterprise



Estimates of Income from Hunting

Table 1. Income Estimates from Hunting on Private Land in Maryland (Kays, 2008)

Deer and Turkey	\$8 - \$30 per acre per year
Quail and Rabbit	\$ variable
Dove	\$50 per hunter per day
Geese	\$50-100 per person per day \$2,000-3,000 per blind per year \$3,000-6,000+ per farm per year



Landowner Benefits

- Reduction in vandalism and better trespass control; increased income.
- Investment by hunt clubs in roads, graveling, drainage culverts, fence building, patrolling, etc.
- Improved wildlife management to control numbers and quality of deer and other wildlife.
- Improved profitability on marginal farms.



Landowner Tradeoffs (Disadvantages)

- Liability Status – economic impact
- Increased Time and Money Investment
- Changes in Farm Operation
- Increased Resentment



Resource Inventory

- Evaluation of wildlife on your land.
- Map-out hunting areas.
- Consider separate leases for difference wildlife.
- Consider forest affects on wildlife - do you need to thin?
- Consider working with adjoining landowners for the purpose of wildlife management and attracting hunters.

Business Management Practice Leases

- Develop a written lease.
- Types of leases:
 - short-term lease
 - seasonal lease
 - annual lease
 - brokerage
- Have adequate liability insurance.
- Should be signed by the lessee and the lessor and witnessed by a notary.



What Should Be In a Lease?

- Names & addresses
- Statement of purpose
- Description of land leased
- Terms of lease
- Rent
- Damage deposit
- Cancellation
- Ability to assign or sublet
- Lessee and lessor duties





Marketing the Enterprise

- Advertising - attract type of hunter desired
 - first refusal to friends & local hunters
- Personal relations
 - hunters are your clients - proper treatment
- Recreational experience
 - hunters purchasing recreational experience, not a commodity
 - Little or no cost benefits to improve experience



Liability Insurance for Fee Hunting Enterprise

- Fee hunting not covered under most farm and homeowner policies.
- Special coverage required for a commercial enterprise.
- Many specialty companies offer policies. Better deals possible through associations.

Liability Insurance for Fee Hunting

- Maryland Forests Association
<https://www.mdforests.org/>
- Forest Landowners Association
<https://www.forestlandowners.com/>
- Outdoor Underwriters
https://nwtf.outdoorunderwriters.com/huntclub_insurance/
- Davis-Garvin Insurance Agency
<https://www.insurehuntclub.com>
- Others – Farm Bureau, existing farm policy, etc.

Maryland Forests Association Provides Liability Insurance for Hunt Clubs

- Comprehensive General Liability Insurance
- Limit Of Liability: \$1 million each occurrence/ \$2 million aggregate
- Fire Damage: \$25,000 per occurrence
- Deductible \$1,000
- 17 cents per acre (subject to a \$150 minimum premium)
- Additional insured (to cover landowner) X \$26

Contact information:

Website: <https://mfa.outdoorund.com>

Phone: (443) 791-7416

Email: director@mdforests.org

Questions?

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