



Hunting Rights:

Understanding Recreational Access & Landowner Liability

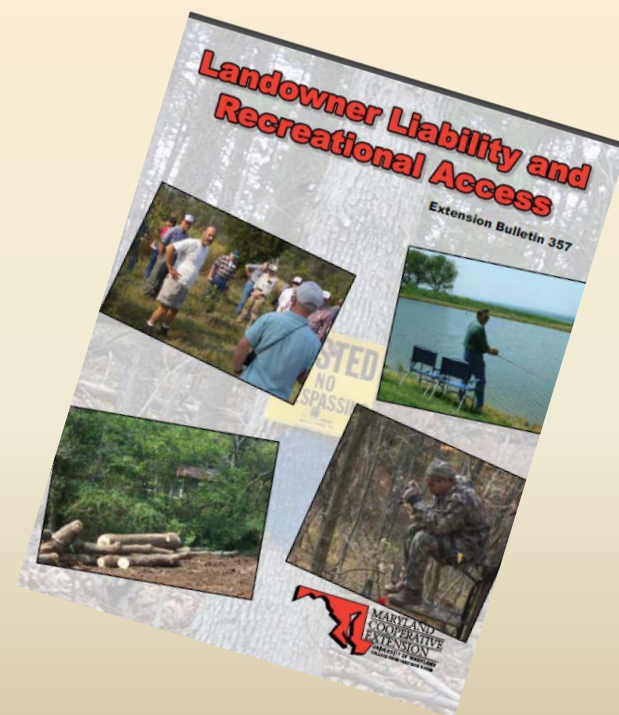
Jonathan S. Kays

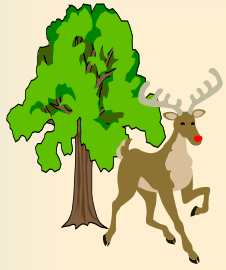
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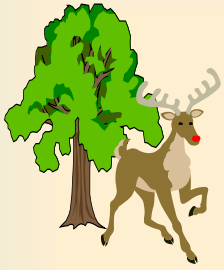
LIABILITY



PERCEPTION

REALITY

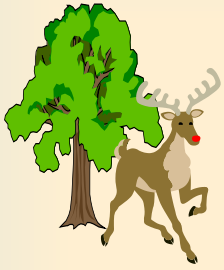
EXCUSE



Common Questions!



- “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?”
- How do I charge for recreational access and still provide maintain liability protection?”



General Rules of Liability Descend from English Law



- Duty of care to protect visitors
- Status of visitor determines the duty of care
- Three classes of visitors with decreasing duty of care:
 - Invitees
 - Licensees
 - Invitees



Advent of Recreational Statutes in the 1950's



- Purpose to encourage landowners to make land and water areas available to the public for recreational activities.
- Limits the landowner's liability toward the persons who enter the land.
- Only apply when no fee is charged.
- Covers the full range of recreational activities.



Maryland Recreational Statues

(Nat. Res. Art. Title 5-1102)



- The purpose is...to encourage...owners of land to make land, water...available to the public for any recreational and educational purpose...by limiting the owner's liability toward any person who enters the land...
- Only applies when no fee is charged.
- Covers the entire range of recreational and educational activities.



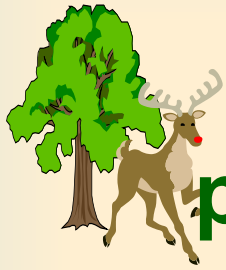
Liability of landowner who permits recreational use without charge



“...an owner of land who...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...:

- Extend any assurance that the premises are safe for any purpose;
- Confer upon the purpose the legal status of an invitee or licensee to whom a duty of care is owed;
- 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.”

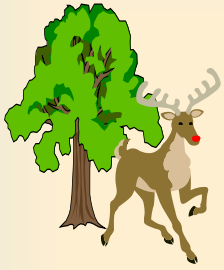
MD Annotated Code 5-1104



Landowner not required to keep premises safe for recreational use



“...owner of land owes no duty of care to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warned of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for these purposes.”

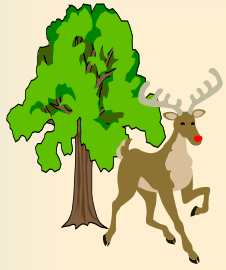


Liability for willful or malicious conduct



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;...”

MD Annotated Code 5-1106



Definition of Charge

A Gray Area Clarified



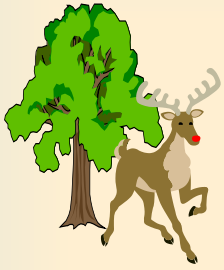
- **Charge** - price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go onto the land
- **MD House Bill 296** (Passed 2000 Legislature)
 - Charge does not include: the sharing of game, fish, or other products of recreational use; benefits to the land arising from the recreational use; and contributions in kind or services to promote the management for conservation of resources on the land.



Reducing Liability



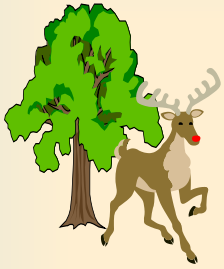
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- Practice Risk Management
 - Control Access
 - Work with your neighbors



Ask the Right Questions!



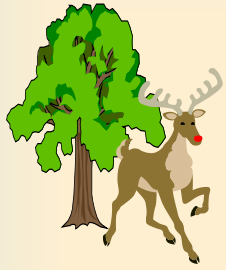
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- Many landowners expend a lot of effort trying to keep everyone off their land and are usually frustrated.
 - Instead, they should ask, “Who do I want to allow on my land.”
 - Groups or individuals with permission to hunt or recreate on a property take it very seriously and they will usually solve your other trespass problems.



What About Insurance



- Pays for legal defense against real and frivolous suits.
- If there was a judgement awarded by the court insurance would pay.
- 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.



Controlling Recreational Use of Your Property



- Post your property in a conspicuous manner
- Post with blue paint marks
- Work with neighbors
- Lease your land with a club
- Reinforce posting instructions



Liability Insurance for Fee Hunting Enterprise



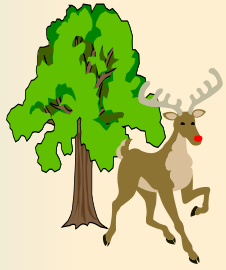
- Fee hunting not covered under most farm and homeowner policies
- Special coverage required for a commercial enterprise
- Many specialty companies offer policies. Best deals through associations.
 - Maryland Forests Association
 - Forest Landowners Association



Selected Sources of Liability Insurance for Hunt Clubs



- Maryland Forests Association
 - (301) 895-5369 www.mdforests.org
- Forest Landowners Association
 - (800) 325-2954 www.forestland.org
- Outdoor Underwriters, Inc.
 - (800) 738-1300 www.outdoorsinsurance.com



Sources of Assistance



Publication

- Recreational access and landowners liability (Extension Bulletin 357)

<http://extension.umd.edu/publications/PDFs/EB357.pdf>

