The Forestry Source

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Recreation and Liability

The article in the March 2010 edition, "Managing Recreation Access on Private Timberland: An Interview with Shelley Tschida," provided insights that landowners should consider when opening their property to third-party recreationalists. As a lawyer with a forestry background, I tend to mull over liability risks presented by various opportunities and wanted to provide a few thoughts.

An issue landowners should consider prior to charging people to use their property is a concern about inadvertently exposing themselves to potential liability. There is a significant risk associated with potential injuries when people recreate in timberlands, especially when activities include rifles, ATVs, and snowmobiles.

Generally, most states provide that landowners owe a duty to protect people entering their property. The scope of the duty can vary depending on the purpose for the entry. Obviously, if a landowner is charging people for entry to the property, the landowner owes the greatest of duties. Some states require a landowner to inspect the property, repair dangerous conditions, and warn of potential hazards (sometimes even holding a landowner liable for unknown, natural hazards that cause injuries). For a forested property, keeping people safe from hazards can be tricky, because the perfection of Mother Nature is in her imperfection.

On the other hand, if landowners permit people to use their property free of charge, their duty to protect the recreationalists is significantly reduced. Some states, like Pennsylvania, even provide landowners with immunity from lawsuit for any injury from someone who enters the property without charge (including trespassers) under most circumstances involving timberlands.

Nonetheless, landowners who open their property should consider how to insulate themselves from potential lawsuits. Injuries are bound to happen, and some greedy lawyers may look to capitalize. There are a few strategies that can help protect landowners:

1. Inserting adhesion ("take it or leave it") clauses on permits can create pseudo-contractual protections, or at least dissuade a lawyer from pursuing a claim. For instance, take a look at the back of a ticket to a sporting event—it probably provides language about assuming the risk of the activity and releasing the institution from liability. While these types of adhesion contracts may or may not be legally enforceable, they can create a significant obstacle for a would-be plaintiff to recover damages.

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2. Installing signs at the access points to the property warning of potential danger can also help to limit liability.

3. Finally, one of the best ways to ensure you don't get saddled with unexpected legal fees is insurance. You should reevaluate your insurance coverage to make sure the limits are adequate and the terms of the policy cover the activity. For instance, a general homeowner's policy may not cover business activities such as charging people for access to your property.

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