



LIABILITY AND THE NORTH CAROLINA LANDOWNER

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Americans are spending more time outdoors in pursuit of recreational activities than ever before. These activities include hunting, fishing, backpacking, canoeing, and birdwatching. But not all outdoor activities are purely recreational. For example, the need to keep fireplaces and wood stoves burning during winter sends many people in search of firewood.

Unfortunately, few people have the forest resources to satisfy their recreational needs or to supply their firewood. Their needs must be met through the use of public land or privately owned land. Because only 10 percent of North Carolina's forestland is public, more and more people are becoming interested in using private lands. What does all this mean for private landowners? What are their options, responsibilities, and risks?

The upswing in demand for use of private land has put many landowners in a position to ask for compensation in exchange for access to their property. Regardless of the proposed activity, each landowner must decide whether to permit access and whether to charge a fee for that access. These decisions help determine the legal status of a person while on the property and define the landowner's responsibilities and liabilities.

The significance of liability can be seen in the increasing number of court cases related to liability and in the sizeable damages being awarded to claimants or their estates. In fact, in a 1984 survey of North Carolina's nonindustrial private forest owners, one-fourth of the respondents who did not make their land available for hunting cited liability as a major reason.

Common Law in North Carolina

North Carolina law recognizes three classes of land users: trespassers, licensees, and invitees. The law provides each class a different degree of protection, resulting in three degrees of responsibility for the landowner. Only a few states have abolished the three classes in favor of a standard that provides for "a duty of reasonable care under the circumstances" or combined licensees and invitees into a single class separate from trespassers.

The law provides the least amount of protection to a **trespasser**, someone who enters the premises of another without permission or any other right to be there. To avoid liability, the law requires only that the landowner avoid willful or wanton injury to the trespasser. The landowner usually knows if someone has been granted permission to be on his property but must be careful to avoid what might be interpreted as implied permission. For example, if land is not properly posted, or if access is often tolerated without

the express permission of the owner, then permission may be implied and a user's status may change from trespasser to licensee.

In cases involving children, the courts may overlook the act of trespassing and apply the principle of "attractive nuisance." In such instances it is the landowner's responsibility to prevent children from accessing a site or condition on property that the owner recognizes as attractive to children. A common example of an attractive nuisance is a pond. Even if the property is properly posted against trespassing, the owner should realize that children might find the pond a tempting place to swim in the summer or to ice-skate during the winter. Should an accident happen, the courts may overlook the act of trespassing and rule that sufficient care, such as fencing around the pond, should have been provided.

A **licensee** accesses land with permission from the owner but provides no benefits, directly or indirectly, to the landowner. A licensee is provided greater legal protection than a trespasser but less than an invitee. Determining a user's status can be confusing because of disparities in the interpretation of owner permission. As stated before, if permission is implied, it may change a person's status from trespasser to licensee. To add to the confusion, suppose a landowner opens property to deer hunters free of charge, which suggests that the hunters are licensees. If that hunting reduces the crop loss caused by deer, then the owner has received a benefit. This could result in the hunters being viewed as invitees rather than licensees.

The landowner's duty to licensees is to avoid willful or wanton injury to them. The owner is also liable for injury caused by dangerous conditions related to on-going operations on his property. Liability usually extends to injuries caused by dangers known to the owner but not immediately apparent to the licensee. For these reasons many landowners may be discouraged from opening land.

The law provides the greatest protection to **invitees** and thereby creates the greatest liability for the landowner. Invitees enter the landowner's property with the knowledge and permission of the owner, and the arrangement is to their mutual benefit. Benefits may be exchanged directly, such as when the invitee pays the landowner for hunting privileges. Benefits may also be exchanged indirectly through cost savings or value added as the result of, for example, a timber stand improvement operation or firewood removal following a commercial harvest operation.

When permitting access to property, treat licensees as if they are invitees. Inform each person of potentially dangerous areas, such as large holes, ponds and streams, and dead or dying trees. If loggers or hunters are in the area, explain their locations. Bring to the visitors' attention any newly created hazard. Informing everyone of obvious and latent dangers is difficult at best, and proving that the information was provided can be even more difficult. Even so, it is important to make every reasonable effort to remove known hazards. One approach is to provide the information through signed use agreements or contracts. However, this method is more convenient for landowners living on or near their property than for absentee owners.

Well-written agreements between the landowner and user can provide protection and place responsibility with the appropriate party. A written agreement should always be made with competent legal assistance. Such arrangements can include access permits for which the landowner receives no compensation, or leases for a day or longer for which the landowner receives compensation.

Written agreements such as leases are generally considered to be instruments that reduce, limit, or delineate the landowner's liability, but there are exceptions that may increase his liability.

Some exceptions are:

1. When there are hidden dangers known to the landowner that should have been disclosed to users.
2. When the owner keeps control of the property for his or her own use (the more property that is retained, the more liability there will be).
3. When the landowner agrees to maintain facilities or makes repairs (buildings, fences, etc.).

Landowners who provide access to their property should consider the additional protection provided by liability insurance. For undeveloped land, this type of insurance is relatively inexpensive. Actual costs depend upon such factors as the size of the land holding, the amount of road frontage, the number of ponds and lakes, and the general location. For example, the annual premium for a \$500,000 policy may total \$90 for a tract with 1,000 feet of road frontage and one lake. In some instances, a minimum premium of \$100 prevails.

Liability insurance is available from Carpenter Insurance Service, Inc., for hunting clubs chartered by the National Rifle Association (NRA), and from the Southeastern Wildlife Federation in Montgomery, Alabama. The premiums are based on the number of hunters or members of the club and may require membership or affiliation in the insuring organization. Most policies have a \$500,000 limit. There may be other insurance carriers that will provide coverage for landowners and hunting clubs.

Limiting Landowner Liability

Landowners in North Carolina and in other states can protect themselves to a certain extent by following rules and regulations concerning other people's use of their property. Be sure to become familiar with state and local regulations. The following steps will help provide protection from trespassers in North Carolina, but regulations vary from state to state.

1. Properly post private property against trespassing. Signs must be at least 120 square inches (for example, 10 inches by 12 inches) and posted no more than 200 yards apart.
2. Post at least one sign on each side and at each corner of the property if the corner can be easily located. (To prohibit fishing, post signs not more than 200 yards apart along banks or shoreline.
3. Post signs out of reach to reduce the risk of vandalism; replace them if they are destroyed or stolen.
4. Erect a gate or stretch a visible cable across any private road to the property to prevent unauthorized entry.

Liability Related to Hunting, Firewood Removal, and Recreation

Three activities have created a strong demand for access to private lands: hunting, firewood removal, and recreation. A description of how each relates to the landowner's liability follows.

Hunting. Hunting for sport or for food is enjoyed by thousands of North Carolinians, but it can be a source of worry to those who open their property to hunters. The sport is inherently dangerous because it involves the use of bows, rifles, shotguns or other firearms.

However, hunting can be mutually beneficial. While the hunter gets a certain satisfaction from the sport, the landowner can get direct or indirect compensation for the use of his land. If the hunter pays the

landowner, or if the hunter is allowed to hunt an overpopulated area where the owner suffers losses caused by the hunted animals, then the hunter is considered an invitee. If there is any doubt about whether a hunter is a licensee or an invitee, the landowner should treat him or her as an invitee.

When granting access to more than one hunter, separate them so that they cannot shoot or otherwise injure each other, and give each a map of the area. Take time to warn hunters of dangerous conditions such as old homesites and wells, logging operations, and other hazards.

Written agreements are useful in providing this information and in placing appropriate responsibility with the hunter. The agreement should require that the hunter be competent and knowledgeable, use firearms safely, and be familiar with hunting rules and regulations.

Firewood Removal. Any work involving chainsaw operation or tree felling is hazardous. Firewood removal frequently involves both. Since unprocessed firewood is a relatively low-value forest product, it is usually acquired by removing individual poor quality trees from standing timber, a process called timber stand improvement. Firewood may also be obtained by removing residual trees or the tops and limbs of trees, following commercial harvest of higher-value timber. These firewood harvest methods can benefit forest landowners either by upgrading the quality of standing timber or by reducing site preparation costs.

Since landowners benefit from firewood removal, they should think of and treat firewood cutters as *invitees*, a consideration requiring the greatest acceptance of responsibility. Warn firewood cutters about or protect them from known dangerous conditions, uses, structures, or activities, and provide for adequate separation between them so that they do not endanger each other.

Make sure that firewood cutters use appropriate safety equipment and that they know and adhere to safe operating procedures. Residual trees in harvested areas can be difficult to fell predictably because of irregular crowns or strong winds. Residual trees are also likely to be defective, hollow, or dead, adding considerably to the hazard of felling them. Just walking, let alone operating a chainsaw, can be difficult in cutover areas because of the tangle of remaining material on the ground combined with other pinned-down materials. Felling selected individual trees among standing timber can also be difficult. Even precise technique may not be enough to assure a clear path to the ground, but leaning trees must not be left as hazards.

Mark individual trees to be cut or all boundaries around an area where cutting is allowed. This should minimize the risk of getting into a timber trespass situation from inadvertent cutting of the wrong trees. As with the sale or removal of any forest product, a written, signed contract is recommended. The contract should clearly detail the rights and responsibilities of all parties.

General Recreation. In North Carolina, as in most states, recreational land-use statutes provide protection to landowners by restricting liability for injuries caused through ordinary carelessness. Landowner responsibilities include avoiding willful or wanton actions that could cause injury. Should an injured recreationist attempt to recover damages, he or she has the burden of proving gross misconduct on the part of the landowner. This statute also applies to waterways crossing private property, thus relieving the owner of having to warn of dangers on a river.

There are two major exceptions to this statute. First, if the landowner receives money or some form of compensation, he or she must accord paying recreationists the same consideration due invitees. Second, if recreationists include children, the landowner is also responsible for informing and protecting them from dangerous conditions.

Summary

For North Carolina landowners, the best protection against liability is appropriate posting of lands, exercise of reasonable precautions in allowing land use, fencing or removing attractive nuisances, warning users about dangers, carrying appropriate and adequate liability insurance, and seeking competent legal advice before entering into any written agreements.

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