

VERMONT LAW: LIMITATIONS ON LANDOWNER LIABILITY



GUIDELINES FOR UNDERSTANDING THE STATUTE THAT PROTECTS LANDOWNERS WHO PROVIDE PUBLIC RECREATION OPPORTUNITIES ON PRIVATE LAND



Providing public access to your land for recreation is a wonderful way to enhance your community's connections, health, and well-being, and to be a good neighbor. Under Vermont law, a landowner's exposure to liability is limited when they open their lands and waters to public recreation without charging a price, fee, or other charge (monetary or otherwise).

The Vermont Department of Forests, Parks, and Recreation encourages landowners to provide responsible public access to their property. Many recreational opportunities Vermonters and visitors enjoy are only accessible thanks to the generosity of these landowners.

BACKGROUND

Many of the public outdoor recreation opportunities we value in Vermont are available through the generosity of private landowners who allow the public to come onto their lands to recreate. This important and long-standing tradition makes Vermont a special place to visit and to live, with abundant recreational resources. However, landowners are justifiably concerned about their personal exposure to liability claims, or lawsuits, that may result from allowing the public to recreate on their property. In 1997, the Vermont General Assembly enacted a statute ([12 V.S.A. Chapter 203, Limitations on Landowner Liability](#)) to address liability concerns and to encourage landowners to make their land and water available for recreational uses. The statute establishes rule that a landowner will have no greater duty of care, or liability, for a person that recreates on their land for no consideration (fee) than the landowner would have to a person who trespasses on their land.

This information sheet provides an overview of the primary substance of this statute but is not a substitute for the full and complete text of the statute or for seeking the advice of an attorney. Recreational liability is a complex issue for which all affected landowners should seek qualified professional assistance as they develop a plan to manage risk for their unique and sometimes changing situations. While situations vary and landowners are encouraged to consult their own attorneys, the landowner liability law offers significant and helpful protection for landowners who promote the outdoor traditions of Vermont by opening their land to public recreation.

EXCEPTION

This statute does not apply to lands owned by a municipality or the State. For more information about town land and liability, please contact the Vermont League of Cities and Towns (vlct.org).

LIMITED LIABILITY

Under Vermont law, a landowner's exposure to liability claims from recreational users on their land is very limited. The landowner's responsibility to recreationists and their degree of care varies depending on the nature of the recreational use and the relationship between the recreation user and the landowner. A landowner is not liable for property damage or personal injury sustained on their land when the landowner did not take from the affected person a price, fee, or other charge (monetary or otherwise) to enter their land (called consideration), and the person entered for a recreational use. When landowners open their private lands to the public for recreation without consideration, their responsibility to and liability for the person recreating is the same as the landowner owes a trespasser. This limits a landowner's exposure to liability, or being successfully sued, and helps encourage Vermonters to open their private lands for recreational use by the public.

The landowner liability law, or statute, applies to "land," which is defined as open and undeveloped land, paths, trails, water bodies, and fences and structures used to enter or go upon land, including bridges and walkways. "Land" does not include areas that are developed for commercial recreational uses. It also does not include equipment, machinery, or personal property, or structures or fixtures that are not used to access or traverse the land. However, liability protections may also apply to injuries or damages related to use of equipment, fixtures, machinery or personal property that is on the land if there is no permission from the landowner for the recreating public to use such things.

The exception to this limitation on liability is when the damage to land or personal injury is the result of the willful or wanton misconduct of the landowner. Recreational uses are identified in the statute and broadly include a variety of activities. Thus, if the landowner receives consideration (which is also defined in the statute) for making his or her land available for public recreational use, or has acted in a willful or wanton manner that causes the damage or injury, the landowner is no longer protected from the limitation on liability under this statute.

The limitation on liability provided by this statute is also extended to the landowner when the person enters for a recreational use, without paying a fee or other consideration, and proceeds to enter upon and/or use equipment, machinery, structures, fixtures or personal property on the land that are not related to recreational use and for which the person had no permission of the landowner to enter upon or use such equipment, machinery, structures, or fixtures. Permission to enter upon an owner's land does not imply permission to enter upon or use equipment, fixtures, structures, machinery, or personal property that are not related to recreation. The same exception for willful or wanton misconduct of the landowner applies to this limitation on liability, e.g. if the injury or damage results from the landowner's willful or wanton misconduct then the landowner is not protected by the statutory limitation on liability.

LEARN MORE

You can learn about options for controlling access to your land at: vtfishandwildlife.com/learn-more/landowner-resources/private-land-and-public-access/what-posting-means.

POSTING OF DANGERS

The landowner liability law provides that a landowner may post a sign warning recreational users of potential or actual dangers on their land or water. A landowner who posts such a warning sign will not be liable for any damages or injury that results from the recreational use of the land unless the damage or injury was the result of the landowner's willful or wanton misconduct.

LANDOWNER PROTECTION

Making land available, without consideration, for recreational use:

- Does not limit the landowner's property rights.
- Does not limit the ability of a landowner and a recreational user to enter into a supplemental agreement for the recreational use of the land or to supplement the duties and limitations established in the statute.
- Does not affect existing rights and responsibilities under other laws specified in the statute (see [12 V.S.A. §5794\(a\)\(4\)](#)).
- Does not support or create an eminent domain, adverse possession, or other prescriptive right or easement claim or land use restriction.
- Does not extend any assurance that the land is safe for recreational uses or create any duty on an owner to inspect the land to discover dangerous conditions.
- Does not relieve a landowner from the obligation to exercise due care for the person's own safety in engaging in the recreational use that they would otherwise have without this statute.

The presence of posted signs, fences, or agricultural or forestry related structures alone do not preclude land from being considered "open and undeveloped."

LEARN MORE

For more information, contact the Department of Forests, Parks, and Recreation:
Claire Polfus, Recreation Program Manager, claire.polfus@vermont.gov