



Public Access Guide For Landowners, Water Trails & River Managers

Thank you for your interest in this guide, which we hope will be a helpful resource for you, your colleagues and members of your water trail and river community. It is intended to help leaders of organizations that manage recreational access to water on both privately held and public land, or are negotiating with landowners for the privilege of doing so. It may also be useful to landowners who allow or are considering recreational access to and use of their property. The information presented here can help land managers and landowners make responsible decisions about how best to provide access to private property and whether management plans or physical features need to be adjusted.

Note: This document is not a legal document, but rather a reference for those who may not be familiar with laws that protect landowners who allow public use of their land for recreational purposes. It highlights the features common to landowner liability protection laws in most states. As there are a number of legal phrases that can be intimidating when they are unfamiliar, the glossary on the last page is a handy reference.

Land managers who allow recreational use of their property should consult their state's *recreational use statutes*, local organizations (paddling clubs, etc.), or their personal legal counsel for updated and additional guidance. They should also review their insurance coverage thoroughly and contact their agent with questions about their exposure.

Recreational Use Statutes

In general, landowners should feel comfortable allowing people to use their land to access a river put-in or portage around a river hazard, due to protection afforded by recreational use statutes. A recreational use statute is legislation intended to promote public recreational use of privately owned land, granting landowners some protection from liability for personal injuries or property damage suffered by land users recreating on their land. Because of recreational use statutes, a landowner does not need to comply with specific standards or specifications to keep the property safe for entry or use, or warn others about each condition, use, structure or activity on the property that a person may sustain an injury. In addition, a landowner does not have to provide assurance to the public that the property is safe on posted signs or elsewhere.

Note: a great deal of information here is found on the American Whitewater website page entitled "Liability and Recreational Use Statutes" – published December, 2010.

However, this immunity from common law liability does not apply if the landowner:

- 'Willfully or maliciously' fails to guard or warn against a dangerous condition, use, structure, or activity or
- Charges people a fee for using the land for recreational purposes.

(Source: US Legal, Inc., 2010-2014, "Premises Liability - Recreational Use Statutes", <http://premisesliability.uslegal.com/recreational-use-statutes/#sthash.ZSU3ucrm.dpu>)

The considerations of protection and liability are connected, so it is a good idea to consider them on their own and as a whole. For example, charging a fee does not free the landowner of all liability; charging a minor fee that covers routine maintenance of the property may not increase a landowner's liability.

Recreational use statutes have been created to encourage landowners to open their land to hiking, hunting, fishing, swimming, boating and other recreational activities. These statutes shield landowners from being found liable if they are sued by people who are injured while recreating on their land. Without such statutes, visitors could consider themselves to be invitees or licensees (if they had paid for the privilege), with a clear right to sue the landowner in the event of injury. However, no state implies general permission to enter private lands of any kind for recreational purposes without the landowner's permission.

Landowners should always consult their state's recreational use statute, local organizations (paddling clubs, etc.) and personal legal counsel for updated and additional guidance and specific cases. They should also review their insurance policy to understand the protection included in the coverage.

Frequently Asked Questions

Included at the end of the document are some common questions that create concern for many private landowners. The information on these pages should help landowners make responsible decisions about how they provide access to their property and the degree to which they need to alter the way they manage public use.

It is important to understand that each state's recreational use statute often vary in content and protection. We suggest you review your respective state's statute before making any decisions concerning public recreational use access on your property.

Visit "*Liability and Recreational Use Statutes*" (American Whitewater, December 2010) <http://www.americanwhitewater.org/archive/article/123> to find specific state recreational use statutes.

Note: a great deal of information here is found on the American Whitewater website page entitled "Liability and Recreational Use Statutes" – published December, 2010.

Private Landowners

Charging Fees

Requiring payment to use one's property in order to access a river or other body of water can play a big part in determining liability and protection from legal action on private land. As a landowner, do you charge fees to people who are using your property for recreation-related purposes? You are generally IMMUNE from liability if no fees are charged. You may NOT be protected if fees are charged. There are exceptions in a few states, reference the individual states recreational use statutes for details.

Here are several examples where you are still protected even if a fee is charged:

- In Alabama, if the land use is non-commercial,
- In Massachusetts, if it is a donation,
- In Nebraska, if the fee is only charged for groups,
- In North Carolina, if the fee applies to recreational uses other than trails,
- In South Dakota, if it is a non-monetary gift up to \$100,
- In Texas, if revenue from fees do not exceed 2times the property taxes,
- In Virginia: if the fees go towards maintaining the land,
- In Wisconsin, if the total revenue does not exceed \$2,000 annually,
- In many states, if a fee is charged but the land is leased to a public agency.

Some landowners may decide to collect a fee to construct or maintain land access or a launch that suffers wear by public use. Landowners may also decide to accept donations through a vandal-proof donation box on the property, commonly signed: "Donations accepted for use of the facilities" or "Use at your own risk." Before establishing and publishing a fee system, check with state and local officials to verify whether or not the type and amount that is being charged will affect exposure to risk.

Example: [Tubing Accident in Arizona](#)

This article explains how charging fees relates to liability and protection considerations within state recreational use statutes. In summary, a participant (Stramka) of a commercial tubing/shuttling operation on a river in Arizona sued the recreation provider (Salt River Recreation) for negligence. The article explains what factors must be taken into consideration with such tort claims between individuals and outfitters on publicly accessed waterways. It also highlights the differences between an "occupant" of premises versus a 'user' of premises, a key component of determining liability.

(Source: Court of Appeals of Arizona, July 21, 1994, "Recreation Immunity Denied to River Float Concession: Stramka v. Salt River Recreation, Inc." from Recreation and Parks Law Reporter (RPLR) case report, © copyright 1998, National Recreation and Park Association, <http://www.prm.nau.edu/prm426/recreation-immunity-case.htm>)

Note: a great deal of information here is found on the American Whitewater website page entitled "Liability and Recreational Use Statutes" – published December, 2010.

A good rule of thumb: Charging fees strongly increases your chances of being liable. Not charging fees strongly increases your protection. Landowners should always consult their state's recreational use statute, local organizations (paddling clubs, etc.) or their personal legal counsel for updated and additional guidance and specific cases.

(Source: American Whitewater, December 2010, "Liability and Recreational Use Statutes", <http://www.americanwhitewater.org/archive/article/123>)

Attractive Nuisances

If the public has explicit or implied (where there is no "No-Trespassing" or similar signage) permission for recreational purposes, a landowner may be held liable for injuries sustained by a child under the age of 18 due to what might be considered an 'attractive nuisance' (in some states). An **attractive nuisance** is a hazardous object or condition on the land that is likely to attract children who are unable to appreciate the risk posed by the object or condition.

Examples of attractive nuisances include: railroads, swimming pools, construction sites, power lines and towers, manmade ponds and fountains, discarded appliances, abandoned automobiles, farm equipment, and wells or holes in the ground.

Landowners are likely to be liable if

- Trespass by children is foreseeable;
 - You know or have reason to know of the danger;
 - Children will not be able to protect themselves from the danger;
 - The burden of eliminating the danger is slight compared to the gravity of the potential harm;
- and
- Reasonable care is not taken to eliminate the danger or otherwise protect the children.

This link provides more information on how to survey your property for water-related attractive nuisances: [Water-Themed Attractive Nuisances Checklist](#), National Children's Center for Rural and Agricultural Health and Safety, 2015.

<http://www.safeagritourism.com/Portals/0/Resources/WaterAttNuisances/WaterAndAttractiveNuisancesChecklist.pdf>

If you think you may have a feature on your property (something similar to the examples listed above), you should try to remove the hazardous situation or adequately protect against it being a danger before allowing public access.

Generally, landowners have no responsibility to make natural bodies of water (natural lakes, streams, and rivers) 'safe' when they are not designated for swimming. They are considered an open and obvious risk to children who are old enough to be on their own.

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Dangerous Conditions

It is very important for land managing organizations to partner with landowners when evaluating whether or not there are examples of dangerous conditions on their property and if so, determining how to remove or reduce the risk of injury at those locations.

Ask yourself, “*Is there anything on my property that could be thought of as dangerous?*” If the answer is “/Yes”, someone who is injured there might accuse you of malicious conduct.

Generally, you are not protected if you willfully, maliciously, or deliberately cause an injury, or know about conditions on your property that could be seen as malicious, such as: glass and nails purposely dispersed in a parking area; barbed wire placed out of sight at ‘tripping level’ along paths; or concrete and/or rebar in the water at a river access or swimming site.

You could be held responsible for the injury taking place if there is evidence that you:

- Knew that a dangerous condition existed;
- were aware that an injury could result from that condition; and
- Took no action in the face of such knowledge.

What is a ‘known’ condition? If you are not aware of a dangerous condition, you are not required by law to investigate your land for every possible place that might be dangerous. In other words, by allowing public access to your property for recreational purposes, you are not responsible or liable for any dangerous conditions that you do not know about.

Example: [Fatality in Texas City Park](#)

This article shows how a landowner can generally owe no duty to warn or protect against the dangers of natural conditions under the recreational use statute. In summary, it discusses how a college student in Waco, TX was unfortunately killed after a natural cliff he was sitting on collapsed underneath him, causing him to fall approximately 60 feet to his death. The city of Waco was sued by the student’s estate, saying that his death was caused by the gross negligence of the city, thus waiving its recreational use statute-based immunity from liability. The courts determined that a landowner generally owes no duty under the recreational use statute to warn or protect against the dangers of natural conditions and that the City did not owe the student a duty in this case. The court emphasized that there was evidence that although the rock wall and sign placed by the City in front of the cliff were man-made conditions, the cliff itself was natural and unaltered.

(Source: Supreme Court of Texas, November 20, 2009, “City of Waco v. Kirwan” from FindLaw © copyright 2015, <http://caselaw.findlaw.com/tx-supreme-court/1505339.html>)

A general rule of thumb: you are generally immune from liability if there is nothing on your property that could be considered to be malicious and if you do not charge any fees.

Note: a great deal of information here is found on the American Whitewater website page entitled “Liability and Recreational Use Statutes” – published December, 2010.

Common Questions

Here are a few common questions that address liability considerations relating to public access on private lands.

Q: I have a land trail across my land and I want to open it to boaters, but I don't want to get sued if somebody gets hurt. What can I do?

A: First, get a copy of your state's recreational use statute. You can check your local law library, or call American Whitewater (866-BOAT-4-AW). Chances are that your state has one that limits your liability considerably. Generally speaking, you probably cannot charge for the use of your land and still be protected. Also, most recreational use statutes don't protect against malicious conduct (see above). Check the statute to see what is required to 'open' your land to the public. Most states consider the lack of 'no trespassing' signs as implied permission and sufficient to get protection of the statute. Others, Rhode Island and Delaware as examples, require landowners to take affirmative measures to demonstrate their intent to open their land to the public.

Q: I plan to open a private parking area for river access on my property. If I charge people to use it, how does that affect my liability?

A: In most states, if a landowner charges for the use of his or her land, the landowner cannot claim protection from liability under a Recreational Use Statute (see above). This is mainly because the intent of the statute is to open private land to public recreational use, not to insulate commercial enterprises from liability. By charging people to use their land, landowners are in effect acting commercially and therefore owe a higher standard of care to those using the land. (Liability for commercial enterprises is not addressed in this paper.) Some states allow a landowner to charge a small fee for maintenance of the land, setting a maximum dollar amount that the landowner can charge and still be protected by the statute. Check your state's statute to see how it addresses the payment for use issue.

Q: What kind of conduct am I liable for if I allow people to access the river from my land?

A: Most recreational use statutes protect landowners' conduct unless it falls under the definition of malicious conduct (see above). Generally, this means that landowners are liable for dangerous conditions on their land only if they know of the condition and purposely choose not to warn others or safeguard others from that condition. Landowners are therefore not responsible for unknown conditions of their land and are not required to ensure the safety of their land should they open it up for public recreational use. Check your state's statute to see how it addresses malicious conduct.

Q: If I allow people to access the river from my land, do they need to sign a waiver in order for me to be protected from liability?

A: Generally, no. Since most state's recreational use statutes protect landowners from liability (with some limitations), a waiver is not necessary. To be extra safe, a landowner can post "Enter at your own risk" signs to put users on notice that there may be dangerous conditions on the land. Also, it cannot be stressed enough that these laws put the responsibility of care on the users and not on the landowners.

Note: a great deal of information here is found on the American Whitewater website page entitled "Liability and Recreational Use Statutes" – published December, 2010.

Check your state's statute to find out the status of landowner liability and how much protection it provides.

Q: What is 'adverse possession,' and does it affect my liability if I grant public access on my property?

A: Adverse possession is a way for someone other than the landowner to obtain ownership by continual use or possession of land without permission or objection by the actual landowner. Adverse possession is not directly tied to liability, but it is still an important issue to be aware of within the context of public access on private property.

Q: If I open my land to public access for recreation, could I become subject to adverse possession?

A: Generally, no. Landowners can open their land to recreational use with the knowledge that they can close it when they wish without worrying about the possibility of the public gaining a permanent right to the land. To help ensure against someone gaining property ownership via adverse possession, you can post 'no trespassing' signs and restrict entrances with gates.

Q: Suppose emergency medical services travel across my property for a rescue. Who is responsible for restoration costs?

A: This is not so much a question of the landowner's exposure to the public, but a question of whether a private citizen can seek compensation or other recourse for damage of private property by the public or a government agency. Contact the jurisdiction responsible for the emergency in question.

Q: Is it true that a landowner can still be sued by a visitor who suffered an injury, but that the court should dismiss it? Will the landowner still have to deal with lawyers' fees and time and energy spent dealing with the court system?

A: Recreational use statutes provide considerable protection to landowners but someone can still choose to sue a landowner. Though few lawsuits against a landowner by someone recreating on their land have succeeded, defending oneself can become expensive. It is important to review your homeowners' insurance policy and contact personal legal counsel to learn about potential coverage of legal fees in case of a lawsuit: in many states, if the person suing the landowner has to pay the landowner's legal fees if he or she loses.

Public Landowners

Liability for accidents occurring on lands owned by federal, state, and local jurisdictions (such as counties and towns differs) from those owned by private parties. Public agencies possess sovereign immunity, a legal privilege by which governments are protected from being sued for injuries related to recreational use.

Examples of the upholding of sovereign immunity and exceptions are found in 'tort' law: tort is a legal term that refers to a "wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation." (Source: <http://dictionary.reference.com/browse/tort>)

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Contact the manager of your local land or field office, and if necessary, your state attorney general with specific questions.

If you participate in volunteer activities on federal, state or local lands, ask your area managers about their liability and volunteer protection.

Federal Government Landowners

The Federal Tort Claims Act is a federal statute that permits private parties to sue the United States in a federal court for most torts committed by people working for the government. However, the federal government has rarely been sued for damages related to injury caused by an event that takes place on public land or waterway.

In general, the federal government has a duty to use reasonable care to keep the premises safe and to guard or warn the visitor from any hidden danger or defect that presents a reasonably foreseeable risk of harm.

State and Local Government Landowners

Most local jurisdictions have immunity from legal action related to injury on public land (including parks, sidewalks, etc.) or water.

State Sovereign Immunity Waiver Statutes provide that there is generally no liability unless, and only to the extent that, the state waives its immunity.

A higher level of protection may be effected by an additional agreement, such as a recreation easement, when recreation is added as one of the functioning purposes of an otherwise dangerous obstacle. For example:

After a large flood in the town of Lyons, Colorado initiated mitigation efforts on Saint Vrain Creek, the town coordinated with the state to build a kayaking 'play wave' as part of the reconstruction efforts.

Most of the surrounding land was owned by the town of Lyons for park purposes, but a ditch company had an easement for its diversion structure and fee-simple ownership for the land under the ditch and inlet structure.

This recreational use easement limited the ditch company's liability and increased protection in the case of an injury.

**However, under Colorado law, if the surrounding land was privately owned, the owners could limit their liability under the recreational use statute through a recreational use easement.*

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Key Terms Glossary

Adverse Possession: A way for someone other than the landowner to obtain ownership by continual use or possession of land without permission or objection by the actual landowner.

Attractive Nuisance: In the law of torts, the attractive nuisance doctrine states that a landowner may be held liable for injuries to children trespassing on the land if the injury is caused by a hazardous object or condition on the land that is likely to attract children who are unable to appreciate the risk posed by the object or condition.

Duty of Reasonable Care: In general, the land manager has a duty to use reasonable care to keep the premises safe and to guard or warn the visitor from any hidden danger or defect that presents a reasonably foreseeable risk of harm.

Federal Tort Claims Act: Under this law, a person can sue the United States in federal court for “money damages...for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” (28 U.S.C.A. § 1346(b))

Invitee: Recreational user who enters land for the benefit of the landowner and is required to pay a fee or provide a service in exchange for the right of access. The responsibility of the landowner to the recreational user increases, since a fee or service is required and the user generally assumes that the property and other conditions are safe.

Landowner: The legal owner of the land, a tenant, lessee, occupant, or person in control of the premises. Some statutes also consider the holder of an easement an ‘owner.’ It is important to understand that if someone is renting your property, or you are a tenant on someone else’s property, the renter could be liable if an injury occurs.

Liability: The quality or state of being obligated or legally responsible for one’s acts or omissions.

Licensee: Someone who enters property with the permission of the landowner and is not required to pay a fee or render a service for the right of access. In other words, licensees enter property to further their own purposes, not the landowners’. Landowners have a greater degree of responsibility to licensees than trespassers in that they have a duty to warn of known dangers.

Malicious Conduct: If the landowner willfully, maliciously, or deliberately causes an injury. Many courts require actual knowledge of a dangerous condition, knowledge that an injury could result from that condition, and inaction in the face of such knowledge.

Negligence: Four elements of negligence must be met for liability to be established: 1. Existence of Duty of Reasonable Care; 2. Breach of Duty; 3. The Breach of Duty was the proximate (legal) cause of harm; and 4. The victim sustained harm (injury or property damage).

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Payment for Use: Most recreational use statutes do not protect landowners from liability if the landowner opened up his or her land in exchange for payment. Whether or not a payment for use was made seems a relatively simple question, however, the issue does arise in litigation and the results vary greatly from state to state.

Recreational Purpose/Recreational Use: Definitions usually include a list of activities such as hiking, swimming, fishing, pleasure driving, nature study, etc. The phrase "includes, but is not limited to" also appears in order to prevent a narrow interpretation of what constitutes a 'recreational use.'

Recreational Use Statute: A term given to legislation generally intended to promote public recreational use of privately owned land. The statute does this by granting landowners broad immunity from liability for personal injuries or property damage suffered by land users pursuing recreational activities on the owner's land.

Sovereign Immunity: A principle with origins in early English common law where the king was immune from suit by his subjects. The rationale was that, since law emanated from the sovereign, he could not be held accountable in courts of his own creation.

Tort: The legal term for a civil wrong, other than breach of contract that results from when one person's action causes injury to another and for which a remedy may be obtained, usually in the form of damages.

Trespasser: Someone who enters land uninvited and without the consent of the landowner. Usually, landowners are only liable for trespasser injuries that result from willful/malicious misconduct. A key element excusing landowner liability is the lack of knowledge of the trespassers presence.

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The logo for the River Management Society, featuring a stylized green river with white rapids flowing over rocks.



Angie Tornes, National Park Service
Corita Waters, National Park Service

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