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“Recreational use” means an individual’s noncommercial activities on another person’s land for hunting, fishing, trapping, hiking, gathering wildflowers or berries, birdwatching, horseback riding, picnicking, swimming, skiing, snowshoeing, and similar activities. It also means any noncommercial activity undertaken without consideration to create, protect, preserve, rehabilitate or maintain the land for recreational uses.

Acceptance of Inherent Risk—12 V.S.A. Section 1037:

Recreationists must accept the risks that are natural aspects of the activities in which they engage.

“...a person who takes part in any sport accepts as a matter of law the dangers that inhere insofar as they are obvious and necessary.”

Vermont Trail System—10 V.S.A. Section 448:

This additionally and specifically protects landowners if the land is part of the Vermont Trail System. The VTS is a voluntary program in which trails have been recognized for their value to Vermont. Acceptance is according to a formal selection process through the Agency of Natural Resources (802-241-3652).

“No public or private owner of land which is part of the Vermont Trails System shall be liable for any property damage or personal injury sustained by any person using these trails unless the public or private owner intentionally inflicts damage or injury.”

Bicycle Routes—19 V.S.A. Section 2309:

This additionally and specifically protects landowners if a state or municipal bicycle route is on the property.

“No landowner shall be liable for any property damage or personal injury sustained by any person who is using, for any purpose permitted by state law or by a municipal ordinance, bicycle routes constructed on the landowner’s property pursuant to this Chapter, unless the landowner charges a fee for the use of the property.”

Snowmobiling—23 V.S.A. Section 3206(d):

This additionally and specifically protects landowners whether or not permission has been given to the operator of a snowmobile to use the land.

“No public or private landowner shall be liable for any property damage or personal injury sustained by any person operating or riding as a passenger on a snowmobile, or upon a vehicle or other device drawn by a snowmobile upon the public or private landowner’s property, whether or not the public or private landowner has given permission to use the land, unless the public or private landowner charges a cash fee to the operator or owner of the snowmobile for the use of the property, or unless said damage or injury was intentionally inflicted by the landowner.”

All-Terrain Vehicle Riding—23 V.S.A. Section 3206(C):

This additionally and specifically protects landowners whether or not permission has been given to the operator of an ATV to use the land. (The wording is the same as in the snowmobile section, but substitutes “all terrain vehicle” for “snowmobile.”)

Horseback Riding/Equine Activities—12 V.S.A. Section 1039:

This additionally and specifically protects landowners who allow horseback riding and other equine activities (e.g., shows, jumping events, steeplechases, etc.) on their land.

“No person shall be liable for an injury to, or the death of, a participant resulting from the inherent risks of equine activities, insofar as those risks are necessary to the equine activity and obvious to the person injured.”

FOR MORE INFORMATION

For additional copies of this flyer contact the Vermont Department of Forests, Parks and Recreation, 802-241-3690.

This handout was created by the Vermont Trails and Greenways Council, June 2003.

Information compiled by Ben Rose and Jennifer Waite.



Trails and Landowner Liability in Vermont

A supplement to the Vermont Trails & Greenways Summer, 2003 Newsletter

A troubling trend for Vermont’s trails in recent decades has been the loss of public access to many private lands due to subdivision and posting of private property. In 1998, Vermont adopted new Landowner Liability legislation that provides excellent protection from liability for private landowners who allow gratuitous public access to their properties. Essentially, a landowner can only be held liable for an injury to a trail user on their land if the landowner was found to have committed wilful or wanton misconduct.

In 1994, the Vermont legislature had established the Vermont Trails System. Landowners along trails recognized by the Agency of Natural Resources as part of this system are protected to an even higher standard: they would only be liable for injury intentionally committed! Bottom line: landowners who allow trails on their land really never get sued, and if they ever did they would be well protected by Vermont state law.

In October 2002, the Vermont Trails and Greenways Council assembled an excellent speaker panel to address the perennial topic of legal issues on trails. Ginny McGrath, George Stearns, John Riley, and Dave Sichel lent their considerable knowledge to the group assembled. Many important points emerged:

- Representatives from the insurance industry and the Vermont Trial Lawyers’ Association told Vermont legislators that there have been **no** cases in Vermont where a landowner was sued by a person who was injured while recreating on that landowner’s property. There have been a couple of cases where an issue was settled out of court.
- Hosting a trail that is part of the Vermont Trails System (Title 10, Chapter 20) provides very substantial protection to any landowner, private or public.
- Under our landowner liability protection statute (Title 12, Chapter 203), a landowner is only liable for an intentional act or gross negligence; in this case “landowner” refers to not only the title-holder of the property, but any group that has a trail license or easement on that property as well.
- As a general rule, when permission for use of land is given, it can never “ripen” into adverse possession; therefore, it is actually better for a landowner to give formal permission for trail access, either through a written agreement or revocable license, than not (case law under Title 12, Sect 502).
- There is no difference for a landowner between having granted a revocable license versus a permanent trail easement in terms of the landowner’s exposure to being sued.
- In terms of risk management for a trails organization, its important to post and maintain signs, rules of trail use, notifications of hazards, etc., respond promptly to any user complaints, and keep good records of trail maintenance, responses to concerns, etc. The “assumption of risk” statute is 12 VSA 1037.
- A landowner can receive the benefit of insurance in the following ways:
 1. Get their own homeowner’s insurance.
 2. Get insurance through the organization holding the trail license or easement. This can happen in two ways: either the landowner can be added in name as a co-insured with the trail organization (as Green Mountain Club does), or the organization has a contract with the landowner that holds them harmless/indemnifies the landowner (as VAST is required to indemnify the State for VAST trails on

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state land). This arrangement, however, needs to be clarified with appropriate language; that the organization will not hold a landowner harmless for willful or wanton acts, and that the landowner is covered up to the limit of the organization's insurance.

3. And keep in mind that sometimes a landowner will raise the question about liability because they haven't decided in general about hosting a trail.

Managing Trail Liability

Vermont has a long and cherished tradition of access to private and public lands for valued recreation activities such as hunting, fishing, hiking, and snowmobiling. Dealing with liability effectively will ensure that the Vermont ethic stays alive and well.

Trail liability is generally dealt with in three ways:

1. by the protection afforded by **state liability laws**,
2. by purchasing **liability insurance**,
3. by a **risk management** approach.

1. STATE LIABILITY LAWS

Legal protection of landowners:

- Vermont's landowner liability statutes do an excellent job of protecting landowners from liability. The general statute (12 V.S.A. Section 5791) says that no owner is liable for any property damage or personal injury to a person who uses the property for recreation, providing a fee is not charged (landowner liability increases if a fee is charged for use of the property for recreation, since a higher level of care (responsibility) is owed to recreationists).
- Other specific statutes provide additional protection for landowners who allow snowmobiling, all-terrain vehicle (ATV) riding, horseback riding, and bicycling.
- The strong landowner liability protection laws make it very difficult for a party to bring a successful suit unless the landowner has intentionally created a danger or engaged in willful or wanton misconduct.

Acceptance of risk by the user:

Under Vermont law (12 V.S.A. Section 1037, Acceptance of Inherent Risk), recreationists accept the risk in the sport they perform. This means they cannot successfully sue a landowner for injuries sustained as a result of the risk inherent to the activity, when snowmobiling, cross-country skiing, mountain biking, or even walking.

Vermont Trails System:

VTS is a voluntary program established under the Vermont Trails System Act and administered by VT Agency of Natural Resources. VTS additionally and specifically protects landowners if the trail they are hosting on their land is part of the Vermont Trails System.

Effect of posting on liability:

Posting does not affect liability. The landowner is protected whether or not the land is posted.

Effect of easements on liability:

Easements do not affect liability. Both the landowner and the party holding the easement are similarly protected, as if there were no easement.

Additional protection for the landowner:

Most standard homeowner's insurance policies cover legal expenses and damages awarded as a result of a lawsuit. Most policies apply to all land and structures. Check with your agent. The landowner can also seek "contractual

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indemnification"—also called "hold harmless agreements"—or become an "additional insured" with the organization or agency using the land. In contractual indemnification, an organization agrees to step into the landowner's liability shoes and pay the cost of defending a lawsuit and any judgments against the owner. As an additional insured, the landowner is added to the organization's or agency's insurance policy, and thus is covered.

2. LIABILITY INSURANCE

Many trails organizations in Vermont have incorporated, and bought their own liability insurance for their trail systems. This affords more legal protection for entering into trail management agreements, and can be an extra layer of protection to offer private landowners. Although effective, this approach is expensive, since it involves purchasing a new policy for activities that could be covered by other means. One cost-effective approach is for a trails organization to incorporate as a land trust, thereby qualifying for "Green Umbrella" liability insurance from the national Land Trust Alliance.

3. RISK MANAGEMENT

Conscientious trail management is the best protection. Trail organizations should identify and assess any potential risk along the trail, maintain adequate signage, provide informational brochures, perform routine monitoring and maintenance, and keep good records. Provide landowners with a copy of this publication, available from Vermont Agency Natural Resources, Department of Forests, Parks & Recreation (802-241-3690). Invite police, fire, and rescue agencies to organized hikes or other special events along the trail, to help them become familiar with the trail, the managing organization, and the types of trail users. Furnish police with accurate maps of the trail, trailheads, and emergency vehicle access points, and give them a key to any locked gates. Provide emergency telephone numbers in trail literature and at trailheads. Good trail design at the outset and a consistent effort to educate your trail users about their responsibilities are the most effective "front line" tools for managing risk.

Vermont's Landowner Liability Protection Statutes

Vermont Statutes Annotated (V.S.A.) have several sections pertaining to protecting landowners from liability for particular situations or activities. Below are very brief descriptions of the relevant laws. In each, the exact wording of its application is quoted.

General—12 V.S.A. Section 5791:

This protects landowners from liability for all recreation use on their land where a fee is not charged. The statute's stated purpose is to encourage owners to make their land and water available to the public for no consideration for recreational uses by clearly establishing a rule that an owner shall have no greater duty of care to a person who, without consideration, enters or goes upon the owner's land for a recreational use that the owner would have to a trespasser. Specifically:

"An owner shall not be liable for property damage or personal injury sustained by a person who, without consideration, enters or goes upon the owner's land for a recreational use unless the damage or injury is the result of the willful or wanton misconduct of the owner."

"Owner" means a person who owns, leases, licenses or otherwise controls ownership or use of land, and any employee or agent of that person.

"Land" means: open and undeveloped land, including paths and trails; water, including springs, streams, rivers, ponds, lakes and other water courses; fences; or structures and fixtures used to enter or go upon land, including bridges and walkways.

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