

Maine's Landowner Liability Law

By: Rudman Winchell Attorney Daniel Burke

With hunting season now in full swing across Maine, residents and non-residents alike are donning their blaze orange and fanning out across the State in search of that trophy buck, looking to create some lasting memories with family or friends or simply hoping to stock the larder. Maine has a wonderful tradition of supporting outdoor recreation, including hunting, made possible by private landowners who make their land available for these pursuits. But what liability might these landowners face if someone is injured on their land while pursuing that elusive white-tail?

Maine has a very landowner-friendly liability law, also known as the recreational use statute. The policy behind it is to encourage landowners to open their lands to recreational use without the concern of possible lawsuits looming over their heads. Under Title 14, Section 159-A of the Maine Revised Statutes, a landowner does not have a duty of care to keep a premises safe for entry or use by others for recreational or harvesting activities or to give a warning of any hazardous condition on the premises to anyone entering for those purposes. For purposes of the statute, a premises includes improved and unimproved land, roads, structures, and water bodies on or flowing through those lands. The statute applies regardless of whether the landowner has posted the property or granted permission to individuals to enter the land.

Recreational or harvesting activities are very broadly defined to include just about anything you can do outside. Some of the more popular activities include hunting, trapping, hiking, sight-seeing, snowmobiling, skiing, canoeing, biking and the gathering of forest, field or marine products. It does not include commercial agricultural or timber harvesting.

There are limited exceptions where the landowner protections will not apply. One is where there has been a willful or malicious failure to guard or warn against a dangerous condition. Another exception to the statute arises if the landowner runs commercial recreation activities on the land and charges a fee for those activities. Where there is no commercial activity, landowners may still charge fees for the use of their lands and benefit from the recreational use statute as long as the fees are not meant as compensation for the exclusive use of the property.

As an extra deterrent to bringing lawsuits against landowners for injuries sustained on their land, the statute provides that a court may award legal costs, including attorney's fees, to a landowner who is found not to be liable for a person's injury. Of course, there is always a risk that someone will injure themselves while recreating on your land and pursue you, as the landowner, for damages. If a situation arises where your liability may be in question, it is best to consult with a qualified attorney as soon as possible.

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