

MAINE Landowner Liability Explained

The information in this brochure applies to individuals, businesses, non-governmental organizations and other non-governmental entities that own, manage, lease, occupy or hold easements on land.
1981

"While nothing's perfect, if you are a landowner or share a landowner's perspective on things, I bring you glad tidings."
Speaker at Maine Public Access Liability conference, September 1995

If someone comes onto my land and gets hurt, am I liable?

No, except in rare circumstances. Maine has a strong law to protect landowners, known as the "landowner liability" law (or the "recreational use" statute), Title 14, M.R.S.A. Section 159-A.

If someone uses your land or passes through your land for outdoor recreation or harvesting, you assume no responsibility and incur no liability for injuries to that person or that person's property. You are protected whether or not you give permission to use your land.

If you allow volunteers to maintain or improve your land for recreation or harvesting, you are also protected from liability for injuries to them.

What does the law mean by "outdoor recreation" and "harvesting"?

Outdoor recreational activities include: hunting, fishing, trapping, camping, hiking, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming and other similar outdoor activities. Recreational activity also includes environmental education and research.

Harvesting includes harvesting of forest, field and marine products such as boughs, fiddleheads, and clams. You are protected even if the person using your land is harvesting the products for sale.

Of course, the law does not protect an employer from liability for injuries suffered by workers in agriculture or forestry, nor does it protect the owner who charges users for the right to harvest, such as "U-pick" operations.

Is the legal protection the same if I post my land "No Trespassing"?

Yes. As a practical matter, your legal protection is the same whether or not the land is posted.

Is it still possible for me to get sued in spite of the landowner liability law?

Yes, but it is very unlikely for two reasons: (1) a person who brings suit and loses because of the landowner liability law must pay the landowner's legal fees and court costs, and (2) the law protects landowners so clearly that there is little opportunity for the injured person to win. In fact, there has not been a single reported successful case against a landowner where the Maine landowner liability law applied.

Does my homeowner's or farmer's insurance provide me with protection from claims?

Your homeowner's or farmer's liability insurance gives you important protection. The insurance company has two responsibilities under most policies. The company has the duty to pay for the costs of defending any lawsuits brought or threatened against you (the "duty to defend"). In addition, if you are

found liable in a lawsuit, the insurer has the duty in most circumstances to pay the damages assessed against you (the "duty to indemnify").

Although each insurance policy has specific coverage and dollar amount limits, most personal injury actions against landowners will fall squarely within the coverage provided by most home and farm liability policies. For all practical purposes, these policies assure landowners of a paid defense of any claims made against them and assure that judgments against them will be satisfied up to the dollar amount of the policy limit.

Be sure to check with your carrier regarding your specific coverage.

Are there situations in which the landowner liability law does not protect me from liability?

Yes, The landowner liability law does not provide protection if a person is injured because of the landowner's "malicious" failure to guard or warn against a dangerous condition. "Malicious" does not mean that you must have a conscious dislike for the person. Malicious intent may be inferred when the landowner has knowledge of a highly dangerous situation, usually man-made, that would have been simple to remedy or warn against and the landowner failed to do so, knowing that people would be likely to be hurt.

Am I still covered by the landowner liability law if I charge a fee to use my land?

Maybe. In general, landowners running commercial recreation or harvesting operations on their land are not protected. For example, commercial campgrounds or ski areas cannot expect to be protected by the law.

But landowners do not automatically lose their protection if they charge fees. The landowner liability law applies to landowners who charge fees for entry as long as the land is not used mainly for commercial recreation or as long as they payment is not for exclusive use, such as club membership or rental for an event or campsite.

A Word of Practical Advice

Use common sense. Try to avoid creating or allowing clearly dangerous situations. For example, if you wish to block a road by hanging a chain, it would be a good idea to flag the chain or take some other action to make it easily visible.

Also, the best advice regarding fees is not to charge them. Otherwise, you may have to prove that the land is not used primarily for commercial recreation and that the user did not gain any exclusive right to use the land.

This brochure was prepared by the Androscoggin Land Trust with assistance from the Rivers, Trails and Conservation Assistance program of the National Park Service; the trial group at Skelton, Taintor & Abbott, P.A.; Maine Coast Heritage Trust; and many other individuals. The publication was funded through the National Recreational Trails Fund Act (Symms Act).

The information contained in this brochure is only a summary. Please consult a lawyer for more detailed information and advice specific to your situation. You may also contact the landowner relations coordinator in the Maine Department of Inland Fisheries and Wildlife who works with landowners and land users on issues of access (207) 287-8091).

The above text was downloaded from the Maine Dept. of Conservation, Dept. of Inland Fisheries & Wildlife website November 2005:
<http://www.state.me.us/ifw/aboutus/landownerrelations/landownerliability.htm>

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Maine's Rail with Trail Liability Amendment

An Act To Clarify That Certain Maine Landowner Liability Protection Laws Apply to Certain Railroad Properties, Railroad Rights-of-way and Utility Corridors

Maine is often cited as a state having strong landowner liability indemnity protection. Given its rural character, low population density and low percentage of public land, Maine's recreational use statute has been considered critical for public access, outdoor recreation and tourism-based business. In fact, there has not been a single reported successful case against a landowner where the Maine landowner liability law applied (since 1979, amended in 1995, in 2004 to protect those who build snowmobile trails, and now again in 2005).

The genesis of this 2005 amendment lies with the efforts of volunteer trail advocates, in particular, John Andrews, the president of the Eastern Trail Alliance. The Eastern Trail is a constituent section of the East Coast Greenway and it is planned to extend from Portland, Maine south to Portsmouth, NH. The envisioned and best route for the trail is beside an active rail line for a couple of short sections----less than a mile in Saco, ME and ¼ mile in South Portland, ME. Each section supports 4 trains per month. The rail operators, when approached about a rail with trail, raised the liability concern. They insisted that the local trail organization would have to secure a liability insurance policy and cross indemnify the RR operator.

Of course, such a policy is prohibitively expensive for a non-for-profit trail group or even a municipality. In one example, the cost of this specified policy would have increased liability insurance costs from approximately \$500 annually to about \$60,000 annually. Part of the reason for the high cost is that liability and insurance issues for a rail-with-trails are not widely understood, and are often misunderstood. Maine's landowner recreational use statute already includes immunity for railroad and utility corridor owners, but many attorneys are unfamiliar with this protection. Out-of-state attorneys for utilities and rail operators were especially reluctant to depend upon Maine's landowner recreational immunity statute.

To make it explicitly clear that this immunity is provided by Maine Law, Senator Barry Hobbins, Chairman of the Joint Legislative Judiciary Committee, introduced such clarifying legislation (at the request of John Andrews) in December 2004. John worked with motorized and non-motorized trail groups statewide, Rails-to-Trails Conservancy, the Maine Trial Lawyers Association and the Bicycle Coalition of Maine in securing the support of legislators and state agencies. With the signing of the legislation by Governor John Baldacci on June 10, 2005, landowner liability issues for Maine utilities with trails and railroads with trails have virtually disappeared.

Since the 2005 law is an amendment of the definition of "Premises" in the existing statute, a copy of this law is not self-explanatory in isolation. The attached document shows the existing law with the amendment language. Statute language is not the easiest to follow. A brochure, "Maine Landowner Liability Explained" was developed and widely-distributed, which gives a layperson explanation of the statute.

RESOURCES ON THE WEB

The current recreational use statute in Maine with the 2005 amendment.
<http://janus.state.me.us/legis/statutes/14/title14sec159-a.html>

GREETINGS

This guide has been prepared to help make your visit on our land a rewarding and enjoyable experience. By learning more about the forest, its history and stewardship, we hope you will have a greater appreciation for this unique place.

Our forests offer year-round attractions for sports and outdoor enthusiasts. You'll find our timberlands open to the public for responsible enjoyment with only limited exceptions; principally where safety and the environment require special attention. The network of gravel roads has been built and maintained by Plum Creek for the purpose of growing, protecting and harvesting wood products.

We do not charge for access to our land for recreational purposes. In return, we ask that visitors treat it and all our property and equipment with respect, give harvesting operations and logging trucks the right of

way, clean up after themselves and observe state laws. Please remember, these lands are privately owned and managed for the primary purpose of growing forest products.

While you visit our timberlands, we ask for your assistance:

- *Keep the land green by preventing forest fires.*
- *Keep the land attractive by eliminating litter.*
- *Keep the land safe by observing safe practices.*



Paul Davis

Senior Resource Manager
Plum Creek Timber Company
Fairfield, Maine

Maine Revised Statutes

§159

Title 14: COURT PROCEDURE -- CIVIL

§159-B

Part 1: GENERAL PROVISIONS

Chapter 7: DEFENSES GENERALLY

§159-A. Limited liability for recreational or harvesting activities

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted. [2005, c. 375, §1 (AMD).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting. [2009, c. 156, §1 (AMD).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use. [2003, c. 509, §1 (NEW).]

[2009, c. 156, §1 (AMD) .]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

- ▼ [§159-A PDF](#)
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- ◀ [CH. 7 CONTENTS](#)
- ◀ [TITLE 14 CONTENTS](#)
- ◀ [LIST OF TITLES](#)
- ▼ [DISCLAIMER](#)
- ◀ [MAINE LAW](#)
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[1995, c. 566, §1 (AMD) .]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

- A. Extend any assurance that the premises are safe for those purposes; [1979, c. 253, §2 (NEW).]
- B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or [1979, c. 253, §2 (NEW).]
- C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person. [2007, c. 260, §1 (AMD).]

[2007, c. 260, §1 (AMD) .]

4. Limitations on section. This section does not limit the liability that would otherwise exist:

- A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity; [1979, c. 253, §2 (NEW).]
- B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:
 - (1) The landowner or the landowner's agent by the State; or
 - (2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or [1995, c. 566, §1 (AMD).]
- C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [1995, c. 566, §1 (AMD).]

[1995, c. 566, §1 (AMD) .]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[1993, c. 622, §1 (AMD) .]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an

owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[1995, c. 566, §1 (AMD) .]

SECTION HISTORY

1979, c. 253, §2 (NEW). 1979, c. 514, §1 (AMD). 1979, c. 663, §75 (AMD). 1983, c. 297, §2 (AMD). 1985, c. 762, §25 (AMD). 1993, c. 622, §1 (AMD). 1995, c. 566, §1 (AMD). 2001, c. 113, §2 (AMD). 2003, c. 509, §1 (AMD). 2005, c. 375, §1 (AMD). 2007, c. 260, §1 (AMD). 2009, c. 156, §1 (AMD).

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**The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.**

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