

Landowner Legal Rights: Liability and Duty Owed Persons Using Your Property - David J. Colligan

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Perhaps the question asked most often by landowners upon learning that I am an attorney is, "What happens to them if someone is hurt upon their premises?". An owner, lessee or occupant of premises, whether or not posted, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning (whatever that is), canoeing, boating, trapping, hiking, cross country skiing, tobogganing, sledding, speleological (cave exploration) activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes, or training of dogs. The law goes on to say there is no duty to give warning of any "hazardous condition or use of or structure or activity on such premises" to persons entering for the above-mentioned reasons.

My advice is **to warn** if there is a known danger which is under the owner's control, such as a structurally defective barn, a target shooting area, an old well or foundation, if for no other reason than to avoid an unnecessary injury to someone. Also, the law does hold farmers liable for gross negligence or reckless behavior, and failure to warn of very dangerous situations may constitute gross negligence. Under no circumstances is malicious or willful failure to guard or warn against a condition, use, structure, or activity protected from liability. Just in case you're wondering (most do), spring guns, booby traps, unleashed wolves, starved and released Bengali Tigers, 30-foot Anacondas and other deliberate but passive "protective" devices also create liability.

A very common misconception is that by giving permission to someone to use your property you create liability where there was none. This is simply not the case. However, if a fee is received for the use of the property, then you do owe that person a duty to keep the premises safe. This is important to remember as hunting leases become more common.

References:

NY General Obligations Law Section 9-103

[Recreational Access and Owner Liability](#). 1995 (revised). Tommy L. Brown. Cornell Cooperative Extension - Department of Natural Resources & Sea Grant. 4 pgs.