

Landowner Liability and Boundary Posting - Robert Plaskov

The Law Firm of Plaskov and Scofield. Bath, NY

Introduction

The broad topic of landowner liability is one that you, as a landowner, will hopefully never have to become personally involved in. No one likes to think that they could be involved in a lawsuit. However, if someone is hurt on your property, if someone is injured while working for you, if someone who is working for you damages the property of someone else, if your logger trespasses over the property line, or even if your dog bites someone, you could be sued. There are many other situations where the landowner could get involved in a lawsuit.

One good bit of news is that the New York State Legislature has enacted Section 9-103 of the General Obligations Law. This provides some protection for the landowner who allows others to use their property for a number of casual uses. This is true whether or not the property has been posted in accordance with the requirements of the Environmental Conservation Law.

Other areas where landowners may have liability might involve your insurance companies. In this day and age of litigation, it is important for everyone to check his or her insurance coverage for any imaginable kind of risk before the injury occurs. Everyone here should meet with their insurance agent to discuss the various types of risk that could arise and to insure that appropriate insurance coverage is available. Just what kind of risks might arise?

Examples of Risk and Liability - Getting Insured

Suppose a four-wheeler or snowmobile is operating on your land and has an accident. A hunter might accidentally injure someone in his own party or himself. Perhaps an abandoned well exists on your property and someone is injured falling into it. The neighbor's child who was hired to paint your barn could fall off a ladder. A logger who purchased logs could be injured while harvesting them, or could harvest logs located on the neighbor's property. These and other types of incidents could occur, and no one should accept that level of liability. It is important to meet with your insurance company to determine whether your coverage is adequate to cover all of the risks and to make sure your limits are high enough to protect your assets.

One specific area of liability which relates to the topic of today's workshop is the action under Section 861 of the Real Property Actions and Proceedings Law for treble damages where trees are cut down on lands of another. There have been court cases where loggers who had contracted to remove logs from a landowner went onto the neighbor's property and removed logs without authorization. If their neighbor cannot collect from the logger, it has been determined in New York that under some circumstances the neighbor can collect against the forest owner. Don't let that be you.

Marking Your Property Boundaries

The obvious solution is to become familiar with the boundaries of your own property, through an instrument survey if necessary. Carefully mark and post all boundaries in accordance with the environmental conservation law. If the posting is proper under Section 11-2111 of the Environmental Conservation Law, trespassers will not be permitted and a citation can be issued to require a court appearance. This careful posting of the boundaries will also ensure that no logger or neighbor could make a claim against you for logging onto a neighbor's property.

A posting under the Environmental Conservation Law requires signs not less than eleven inches by eleven inches each bearing a conspicuous statement which uses the word "*posted*" or warns against entry for specified purposes. The signs have to be no more than 650 feet apart, and must be located close to and along the boundaries of the area protected. At least one sign must be on each side of the protected area and each side of each corner of the protected area. Illegible or torn down signs shall be replaced at least once per year. These are relatively minimal requirements and will give you great protection from trespassers as well as limiting liability.

Conclusion

In conclusion, although this topic could be one of the great concerns of the forest owner, it is hoped that you not let it limit your use and enjoyment of your property. The possibility of a successful liability claim is remote and protections are available for you. Your land is yours to use and enjoy responsibly. Common sense, limitations on usage, and careful delineation of the boundaries will aid in your enjoyment.