

Landowner Liability and Recreational Access
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Overview

The increasing interest of the general public in outdoor recreation activities, the limited amount of public land available, and increasing development of open space have created greater pressure on private rural land for recreation. It is increasingly clear that recreational activity and associated tourism on private lands are important components of rural economic development. Also, the need to control an increasing deer population on private lands has many landowners interested in encouraging more hunting on their properties. However, concerned private landowners increasingly face questions, such as:

- What are my rights, and how do I exercise them to control recreational use of my property?
- What is the extent of my liability to recreationalists, and how can I protect myself against liability suits?
- What are my options for posting my land and controlling trespass by recreationalists? How does it affect my liability?
- How do I charge for recreational access and still provide liability protection?
- What do I do if someone takes timber from my property without permission?

The answers to these questions can be complicated. However, as a private landowner in Maryland, it will be helpful to you to understand the laws relating to landowner liability and trespass, and the safeguards that minimize liability, so that you can make informed decisions regarding the use of your land by others for recreational activities. The Maryland Annotated Code contains the laws discussed in this publication. Copies of the Code can be found in most public libraries and on the internet. This publication is intended to be an educational aid to help landowners better understand their rights and alternatives regarding recreational use of their land for free or fee. The intention is to suggest easy and (usually) inexpensive methods by which landowners can protect themselves. *This publication is not intended to be a substitute for counsel from a lawyer or insurance agent regarding a particular situation. Individuals who want or need this counsel are urged to seek a knowledgeable and competent source.*

Liability

General Rules

The general rules of landowner liability descend from ancient English common law and have been incorporated into American law. This area of law is based primarily on the *visitor's status* at the time of an accident or injury. The degree of owner liability or the *duty of care* depends upon which one of three classes a visitor fits into: *trespasser*, *licensee*, or *invitee*. The lowest duty of care is owed trespassers and the highest duty of care owed invitees. Basic definitions for each have developed under common law.

- A *trespasser* is a person who enters or remains on another's property without the permission of the landowner. Generally, a landowner owes little or no duty to a trespasser; for example, a landowner has no duty to seek out, discover, or correct unsafe conditions. However, in Maryland, the landowner is liable for malicious or willful injury to the trespasser.

- There are two classes of visitor that enter the owner's property with permission; however, common law has not been quite as precise on the *duty of care* owed these visitors.
 - A *licensee* is a person who has received the owner's permission to be on the land to further their own purposes, with no particular benefit for the owner. The owner generally has a duty to warn, but not correct hazards. The owner usually has no duty to inspect the premises for dangerous conditions or activities but, should he know of any, he has an obligation to correct them or inform the licensee.
 - An *invitee* or business visitor is highest on the scale of visitors. This is a person specifically invited to enter the property for the benefit of the owner. People who pay a fee to use the property, such as hunting clubs, are invitees, as are people who visit a commercial enterprise, such as a marina, bed and breakfast, or pick-your-own operation. The owner generally has a duty to seek out, discover, correct, and prevent dangerous conditions or activities, and to warn the invitee of those that cannot be corrected.

It is easy to see that the status of a visitor on your property, and your duty of care, could change just by whether or not you invited someone to hunt or fish, or if they trespassed on your property. Given the uncertain risk of liability, there is little incentive for rural landowners to encourage recreational use of their property. In 1965, the Council of State Governments proposed the adoption of a model act, known as the 1965 Model Act (Council of State Governments, 1965), to encourage landowners to make their property available to the public for recreational use at no charge by limiting liability for injury occurring on the owner's property.

The model act defined the status of all recreational users as trespassers. In 1979, a refined model act, known as the 1979 Proposed Model Act (Church, 1979), was proposed after a study commissioned by the National Association of Conservation Districts and others found continued landowner concerns about liability protection for injuries occurring on the property. These model acts, known as *recreational statutes*, were adopted in various degrees by different state legislatures. It is important to note that they apply only when there is no charge for recreational access. The lack of statutory and judicial consistency between states has no doubt contributed to landowner concern over liability and requires that each landowner have an understanding of his or her own state's law.

The Recreational Statute in Maryland

The purpose of Maryland's recreational statute, first enacted in 1957 and thereafter amended, is clearly highlighted in Title 5, Subtitle 11 of the Natural Resources Article of the Maryland Annotated Code, entitled "*Public recreation on private land.*" The statute (Annotated Code of Maryland, Natural Resources Article, Title 5-1102) clearly states the purpose of Subtitle 11:

"The purpose of this subtitle is to encourage any owner of land to make land, water, and airspace above the land and water areas available to the public for any recreational and educational purpose by limiting the owner's liability toward any person who enters on land, water, and airspace above the land and water areas for these purposes."

Basic definitions of the italicized words below are clearly defined in the Annotated Code of Maryland, Natural Resources Article, Title 5-1101, as follows:

Charge - price or fee asked for services, entertainment, recreation performed, or products offered for sale on land or in return for invitation or permission to enter or go onto the land.

Charge does not include:

- The sharing of game, fish, or other products of recreational use;
- Benefits to the land arising from the recreational use; or
- Contributions in kind or services to promote the management or conservation of resources on the land.

Educational purpose- nature study; farm visitations for purposes of learning about the farming operation; practice judging of livestock, dairy cattle, poultry, other animals, agronomy crops, horticultural crops, or other farm products; organized visits to farms by schoolchildren, 4-H clubs, Future Farmers of America (FFA) clubs, and other clubs as part of their educational programs; and viewing historical, archaeological, or scientific sites.

Land - land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty.

Owner - possessor of a fee interest, tenant, lessee, or person who possesses the premises.

Recreational purpose - hunting; fishing; swimming; boating; camping; picnicking; hiking; pleasure driving; nature study; waterskiing; winter sports; horseback riding or horse driving; operating motorized recreational vehicles; hang gliding; hot air ballooning; operating light airplanes and other forms of recreational aircraft; and viewing or enjoying historical, archaeological, scenic, or scientific areas. (*Note: even if the recreational activity is not specifically mentioned courts acknowledge them as recreational - i.e. mountainbiking, rock climbing, caving, GPS caching, etc.*).

After defining the broad range of recreational purposes and educational activities covered by the recreational statute, the Annotated Code of Maryland, Natural Resources Article, Title 5-1104, clarifies the liability of the landowner who permits recreational use of land without charge:

“The owner of land who directly or indirectly invites, or permits without charge, persons to use the property for any recreational or educational purpose or to cut firewood for personal use does not by this action:

- 1) extend any assurance that the premises are safe for any purpose;
- 2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed; or
- 3) assume responsibility for or incur liability as a result of any injury to the person or property caused by an act of omission of the person or persons.”

The Annotated Code of Maryland, Natural Resources Article, Title 5-1103, addresses the issue of how safe the premises are to be kept for recreational use as follows:

“An owner of land owes no duty to keep the premises safe for entry or use by others for any recreational or educational purpose, or to give any warning of a dangerous condition, use, structure, or activity on the premises to any person who enters on the land for these purposes.”

While the statutes provide good liability protection for landowners, this protection is not absolute. The Annotated Code of Maryland, Natural Resources Article, Title 5-1106, states the limit of liability of the landowner:

“The provisions of this subtitle do not limit in any way any liability which otherwise exists for *willful or malicious failure* to guard or warn against a dangerous condition, use structure, or activity; or for injury suffered where the owner of the land charges the person who enters or goes on the land for recreational or educational use. However, if land is leased to the State or any of its political subdivisions, any consideration the owner receives for the lease is not a charge within the meaning of this section.”

The term *malicious* means behavior purposely intended to cause harm, such as the use of traps, trip wires, etc. Malicious conduct is a very high standard to prove in a court of law, compared to negligence and willful conduct. The term *willful* has traditionally meant behavior that falls somewhere between malicious actions and merely careless or negligent behavior. Problems are likely to be greatest when a particular dangerous condition would have been discovered with only minimal inspection by the owner. A court that is hostile to reducing landowner liability might find such conduct to be willful; whereas other courts who conservatively interpret the recreational statute may not.

Where Does the Recreational Statute Apply?

Case law from around the country indicates that recreational statutes are intended to apply to undeveloped, open and expansive rural and semirural properties where hunting, fishing, trapping, and other recreational activities might be expected to take place. However, as more rural land is developed for large lot subdivision, business and recreational parks, and other uses, the application of the recreational statute may change for specific property owners.

In determining whether a tract of land is within the purview of the statute, the tract's size, use, and location would be relevant factors. Would it be reasonable to expect a landowner, without extraordinary effort, to maintain supervision over the property such that those who enter for recreational purposes would be noticed? If it is unreasonable or impractical, the recreational statute would probably apply. The statute is not intended to grant immunity from liability to the owners of land in small lot residential areas and populated neighborhoods. These areas are governed by other laws that do require regular inspection, notification, and correction of hazards.

In 2002, the Maryland Court of Special Appeals confirmed that the Maryland recreational statute protects private property owners from liability for injuries sustained by user of their land. The case also confirmed that this protection applied to recreational users of a business park, not just rural undeveloped properties. (See pullout).

Maryland Circuit Court of Appeals Uphold Recreational Statute

Geir Fagerhus, a marathoner, was staying at a Greenbelt Marriott Hotel where a 1.5 mile fitness trail passed through several parcels of property including that owned by the hotel. When he checked into the hotel on January 28, 1998, he asked the hotel employee if the trail was open and safe (from muggers), and the employee said yes. After a couple of laps he fell due to “black ice” on the trail and severely injured his hand, shoulder, hip and leg. He did not tell anyone at the hotel about his fall but went to the emergency room, and then flew home to Sweden. After having surgery he sued the owners of the hotel property, its’ management company and Host Marriott Crop. He alleged the hotel had a duty to business invitees to inspect the trail, to render it fit and safer for use, and to warn potential users of potential dangers. The suite also alleged the management company negligently failed to make the trail safe or warn him the trail was not safe.

The trial court ruled the hotel and management companies enjoyed the protection of the Maryland Recreational Statute which protects private property owners who allow others to use their land for recreational purposes from liability for injuries. Fagerhus appealed to the Court of Special Appeals of Maryland. In short, the Court of Special Appeals in the case *GEIR FAGERHUS, ET UX. v. HOST MARRIOTT CORPORATION, ET AL.*, affirmed the judgement of the lower court in favor of the hotel property and its management company.

Marriott could not claim the protection of the Maryland Recreational Statute because it had no interest or control over the fitness trail. The issue with regard to Marriott was whether it negligently induced Fagerhus to use the fitness trail by using it as a marketing tool, or whether it negligently misrepresented that the trail was safe. The Court stated Fagerhus had not provided evidence that Marriott represented to its guests that it inspected or maintained the trail, or that “safe” meant it was free of ice. The Court again affirmed the lower court judgement.

What does this mean?

- First, this case upholds the Maryland Recreational Statute in no uncertain terms.
- Second, and perhaps most important in our developing state, the case applies the statute to developed rural properties and open space areas, not just expansive rural woodlands.

Source: *Fagerhus v. Host Marriott Corporation, et al.*, No. 0726, September Term 2001, in the Court of Special Appeals of Maryland, decided April 2, 2002.

<http://caselaw.lp.findlaw.com/data2/marylandstatecases/cosa/2002/1524s01.pdf>

Liability to Children

By reason of their inexperience and immaturity, children are more likely to explore strange places without permission and to ignore property boundaries. Under the recreational statute, presence on another's land without permission would classify them as trespassers. In the case of trespassing children, they are treated the same as trespassing adults.

In many states, the *attractive nuisance doctrine* has been adopted to clarify a landowner's obligation to children. Under the attractive nuisance doctrine, Restatement (2nd) of Torts, the following statements apply:

“A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if:

- a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and
- b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and
- c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and
- d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and
- e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.”

Maryland has not adopted the attractive nuisance doctrine. The use of *State v. Baltimore Fidelity Warehouse Co.*, 176 Md. 341 (1939) is the case law authority for this statement. Therefore, in Maryland, a landowner's potential liability to a trespassing child is no greater than potential liability to a trespassing adult.

Lawsuits

It is incorrectly perceived by many landowners that anyone entering property covered under the recreational statute can be injured, sue, and win a judgment. While it is possible for anyone to sue, it is quite another matter to win a judgment. The Maryland recreational statute provides landowners good liability protection and a review of case law has found few, if any, judgments to support the above belief. The experience of large forest industries that allow recreational access for free and fee also indicates that lawsuits have not been a major problem. Most cases are settled out of court.

For a recreationalist to successfully sue a landowner, he or she must prove the landowner:

- 1) knew of a dangerous condition on the property;
- 2) realized the possibility of the recreationalist encountering it; and

- 3) willfully or maliciously failed to eliminate or reduce the hazard or to warn the recreationalist. In addition, the injured person must show proof of actual loss or damage.

Even if the chance of being held liable for an injury on your property is very small, the chance of being sued may not be so small. The cost of making your defense could run into thousands of dollars. This is why adequate liability insurance coverage is so important. Insurance is a contract and the terms of every policy dictate the extent of coverage that is offered. Many policies will pay for the cost of your defense up to the limits of the policy, as long as your conduct was not criminal. Check with your insurance provider to determine the extent and conditions of available coverage. The following section on protecting yourself will deal with this issue in more detail.

Other Areas of Concern for Landowners

Even with the recreational statutes adopted by the Maryland legislature, landowners have expressed concerns over gray areas. The 1979 Proposed Model Act was developed because a national study found liability law to be generally too protective of users, which discouraged landowners from opening land for recreational use. All of the areas mentioned below are addressed by the 1979 Proposed Model Act, but some have been adopted by Maryland. Interested persons should look to this reference for more details. A few areas of concern include:

- **Charge more carefully defined.** The meaning of the word *charge* has been adequately clarified in the Annotated Code of Maryland, Natural Resources Article, Title 5-1101. A charge does not include sharing of game or other products of recreational use; benefits to the recreational user; contributions in kind, services made to the sound conservation of the land; or monies received by government agencies. This means that landowners can have recreationalists fix fences, maintain roads, or other activities and still be covered by the recreational statute.
- **Allow small charge for access.** Landowners incur costs to keep land open for recreational access. Costs include taxes; reducing hazards; and maintenance of fences, signs, and roads. Some states have changed their recreational statutes to allow the landowner to charge a small fee to each recreationalist (West Virginia allows a \$50 charge per entry) to cover the costs of owning and maintaining the property. The landowner still enjoys the liability protection provided by the recreational statute.
- **Liable only for malicious damage.** Landowners can still be held liable for willful or malicious damage under the existing recreational statute, but not negligence. If the recreational statute limited landowner liability only to malicious conduct by the landowner, this would greatly increase protection for landowners. As discussed in “The Recreational Statute in Maryland,” above, malicious conduct is not easy to prove.
- **Improved understanding of prosecution procedures.** The role of the Maryland Natural Resource Police and landowners in the prosecution of trespassers varies depending on the type of trespass, use of written permission, and whether or not it involves public or private land. There is a continual need to educate landowners, recreationalists, and police on trespass procedures and changes that occur in the law.

How Do I Protect Myself From Potential Liability?

Practice Risk Management

The simplest and least expensive way to minimize your liability and the possibility of being sued is to prevent accidental injuries before they happen, commonly called *risk management*. This means reducing the chances that an accident will occur by adopting practices that would indicate to a person filing a suit or to the court that you were acting in a responsible manner. The question to ask yourself is “What would a reasonable person do?”

Risk management practices that can be implemented by landowners include the following:

- 1) Remove any known hazards on the property, or post adequate warning signs nearby. Hazards could include old buildings, wells, or cliffs.
- 2) If certain persons or organizations regularly use your land, do the following: a) interview the recreationalists to be sure they are the type of people you want on your property; b) provide a rough map of the property that indicates hazards you think the user may encounter, as well as safety zones and rules you may have for users; and c) require a signed release statement that states the user has been informed of hazards and holds you harmless for any injury caused on your property.
- 3) Be certain your liability insurance coverage is what you want and need. Notify your insurance provider regarding the recreational use of the property.

Carry Adequate Liability Insurance

As long as a landowner requires no charge from the recreationalist, legal costs and judgments from lawsuits resulting from harm suffered by a recreationalist may be covered by a conventional homeowner or farm policy. Many insurance providers will pay for the damages resulting from a judgment (up to the limits of the policy), and also the cost of your legal defense, as long as your conduct was not criminal. However, all policies are different and you must talk with your insurance provider to determine the extent and conditions of available coverage.

Typically, most lawsuits of this type never go to trial and are settled out of court, which explains why so little case law exists. Many landowners own rural land in addition to their regular home. It is common practice for a conventional homeowner’s policy to cover liability on unimproved forest land or farmland at no extra charge, as long as there is no home on the second property or charge for access. Once again, you must check with your insurance provider on the extent and conditions of this coverage. The reason that many insurance companies are willing to provide this coverage for no extra charge may be related to the lack of lawsuits and judgments arising from these kinds of situations.

Often standard homeowner policies are for relatively low amounts. If you own property that is frequented by recreationalists, it is highly advisable to increase the maximum coverage for the property to at least \$1 million. The cost of this extra coverage is usually very low. Discuss the recreational uses of your property with your insurance provider to be sure that you will be

covered and to understand any conditions that may apply.

If you are operating a fee charging operation for hunting, fishing, or other recreational use, you will need to buy specialty insurance. Your regular insurance company may be able to offer you a policy, but many times these policies can be very expensive and make the charge for use impractical. It is usually best to check with a company that has expertise in dealing with clients with hunting enterprises or other recreational uses and compare that coverage with that of specialty companies. Many associations also offer group insurance policies to their members. A few of these companies and organizations can be found in Appendix B.

Frequently Asked Questions Involving Recreational Liability

Suits by recreationalists against rural landowners are extremely rare, making it difficult to predict the likelihood of a landowner being found liable under certain circumstances. However, from previous cases and legal comments, we can provide points to consider regarding some of the most frequently asked questions involving recreational liability.

Question 1: Can I be sued even for obvious natural hazards, such as if a hunter trips over a rock or falls down a steep slope and is injured?

Opinion: Anyone can be sued, but to obtain a recovery, the recreationalist must prove that you 1) knew of a dangerous condition on your property; 2) realized the possibility of the recreationalist encountering it; or 3) willfully or maliciously failed to eliminate or reduce the hazard or to warn the recreationalist of it; *and* he or she must show proof of actual loss or damage. Generally, previous courts have ruled that the mere presence of naturally occurring phenomena (e.g., lakes, streams, steep slopes) does not in and of itself constitute an inherent hazard.

Question 2: Suppose there is a hazard on my property, such as an abandoned well or a fallen-in barn, that a recreationalist or someone on an educational field trip might encounter. How can I protect myself against someone getting hurt and suing me?

Opinion: Practice risk management and do all you can to eliminate or post the hazard. Have the well filled in or the building torn down. If you can't eliminate the hazard, enclose it with a sturdy fence, or post frequent warning signs around the hazard, stating that it is a dangerous area and for all to keep out. Make sure the fence is obvious and does not itself constitute a hazard. Also, make sure you have adequate liability insurance.

Question 3: I have serious damage to field crops and forestland from deer. I want to allow hunting on the property. How do I find good hunters and protect myself from liability?

Opinion: The challenge of locating hunters who are responsible, respect your rights and property, and who will also harvest an adequate number of female deer to reduce a population requires some initial effort. Contact, interview, and select hunters by word-of-mouth, local sportsman's organizations, or a newspaper ad. Don't be afraid to ask for and check on references they provide. Be upfront about your expectations of hunter's use of the property. Develop a written hunting lease that requires harvesting female deer before taking a buck, and require the group to carry liability insurance if you are charging for the recreational access. Once the right persons are found, these arrangements can be long-term and require minimal effort.

Question 4: Suppose several hunters were hunting on a landowner's property, and one accidentally shot another. Could the landowner be found liable?

Opinion: The Annotated Code of Maryland, Natural Resources Article, Title 10-411, states landowners are not liable for accidental injury or damage to the person, whether or not the person had permission to hunt. The injured hunter might be able to successfully sue if he or she could convincingly show that you, the landowner, acted in a willful or malicious way. This would require proving you knew that there were enough hunters on your property for this accident to have been foreseeable, and that you deliberately failed to warn of the hazard. This is difficult to prove.

Question 5: Some sportspeople and clubs claim to have their own insurance that will provide coverage in case someone gets hurt. Will this relieve the landowner of liability?

Opinion: First, you can not assign liability to someone else. Without a copy of a policy and knowing the terms of the insurance, it would be unwise to take people at their word. You would also want to know how your own primary liability insurance policy would work with their policy. There are a lot of questions that would need to be answered and much would depend on whether or not you are charging for access or not.

Your concern should be that you are covered by your policy in case of an accident. Check with your insurance agent. If there is no charge for the group to use the property, then an additional policy may or may not be needed. If you are charging then you would want to be more diligent to keep the property free of foreseeable dangers, and to have an additional insurance policy. It is desirable to have the individuals or club, as well as the landowner, on the policy. Your present insurer may provide this coverage or you can secure it from one of the specialty companies in the appendix.

Question 6: Is it less likely that I will be sued successfully if my property is posted?

Opinion: Probably not. Posting your property gives the ability to prosecute a trespasser, but courts make little if any distinction between trespassers and those who have permission to use the property when it comes to liability. The amount of liability for the landowner will depend on the status of the person on the property: trespasser or invitee. In general, it is best for landowners to minimize their liability by doing their best to keep their property safe from foreseeable dangers involving others.

Question 7: If an accident occurs in which I am found liable, won't my liability insurance rates skyrocket?

Opinion: Generally, no. Unlike automobile insurance, most companies figure general liability insurance rates only on an aggregate basis. Thus, your rate should not increase appreciably as a result of a suit successfully brought against you. Check with your insurance provider to be sure.

Liability to Recreationalists Who Pay a Fee

When landowners charge a recreationalist a fee, the Maryland recreational statute does not apply. The recreationalist is usually considered an *invitee* in the eyes of the court. The duty of the landowner to protect them extends to all known dangers and those that would be discovered with reasonable care. The unintentional failure to meet this duty of care is called *negligence*. Court cases on negligence are rare; but to illustrate the difference in liability when a fee is

charged, a farmer who charges people to hunt or fish could be held liable in these hypothetical cases:

- Damage caused by farming activities not carried out “with reasonable care.” Example: A fisherman is cut by flying debris caused by a farmer who is chopping brush nearby.
Damage caused by employees. Example: The farmer’s helper tosses a rock out of the way and thereby injures a passing angler.
Damage to one patron caused by another. Example: Excessive brush on an access path causes one angler to hook another, injuring an eye.
Damage caused by known hazards not identified to patrons. Example: An angler slips and breaks her leg on a treacherous path she wasn’t warned about.
Damage caused by hazards that could have been discovered by routine inspection.
Example: A hunter fall through some weak boards covering an old well that the farmer could have easily replaced.

Landowners inviting recreationalists to their lands for their own benefit should practice risk management by minimizing possible problems. Examples include erecting signs to identify hazards, fencing off hazards, posting open hours, and giving patrons a written statement of known hazards and rules and regulations. Just as important, landowners should purchase liability insurance to protect themselves in case of a lawsuit.

Trespass and Property Rights

Maryland law provides a framework that allows landowners to fully control the recreational use of their property. Landowners, by their actions, can do the following: 1) exclude all recreational use; 2) allow blanket permission for anyone to use their property for most activities, except hunting; or 3) make decisions on a case-by-case basis.

Unwanted trespass may begin as a small problem, but can often escalate into poaching, theft, property damage, or even bodily harm. Controlling trespass is seldom easy. The following sections will provide insight into your options.

Rights of Landowners Versus Recreationalists

The Annotated Code of Maryland, Criminal Law Article 6, Sections 401-405, defines the rights of landowners versus recreationalists. The term *conspicuous manner* is defined in “Controlling Recreational Use of Your Property.” Paraphrased, Section 402 states:

“A person may not enter or trespasses on property that is posted *conspicuously* against trespass A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

The Annotated Code of Maryland, Criminal Law Article 6, Section 403, clarifies that the landowner can use *verbal* notification to control unwanted (*or wanton*) trespass on posted or unposted land. A person who violates Article 6, Section 403 is guilty of a misdemeanor and on

conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

Entering or Crossing Property: “A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner’s agent not to do so, unless entering or crossing under the good faith claim or right or ownership.”

Remaining on the Property: “A person may not remain on private property including the boat or other marine vessel of another, after having been notified by the owner or the owner’s agent not to do so.”

The Annotated Code of Maryland, Natural Resources Article, Title 4-11A-22, makes special mention of prohibiting trespassing to fish in privately owned ponds. It states:

“If a person who owns, controls, or erects an artificial pond on land he owns or possesses, puts any fish or the eggs or spawn of fish in the pond for breeding and cultivating purposes, and gives notice by written or printed handbills in public places near the pond, no other person may enter the premises to fish *without obtaining the consent of the owner.*”

One problem with the language of this law is that to prosecute for trespass, the owner must prove he or she put out handbills in public places - an obsolete practice. In practice, it is best to conspicuously post “No Trespassing” signs which provide legal recourse for prosecution if needed. More information on this will be provided later.

Prosecuting Trespass

These laws make it clear that it is unlawful to trespass on properly posted private lands and that, whether posted or not, persons must leave the property immediately upon request by the landowner or the landowner’s agent. The important point is that to successfully prosecute for trespass, it is best to have the Maryland Natural Resources Police (NRP) issue the citation. To do this, they must witness the trespass firsthand. Otherwise, the landowner must file the trespass charges on their own, which usually requires other witnesses and evidence to be successful.

First, if you witness trespass on your property, you can ask the person to leave and under Criminal Law Article 6-402 & 403, they must leave. If they do not, do not confront the trespasser. Leave the area and contact the Maryland Natural Resources Police so that they can get to the property and witness the trespass on your property. In some cases, you may wish to wait till a later time to call the NRP when the trespasser is unaware they are being watched and will be on the property for a time, allowing the NRP to get there. When the NRP witness the trespass, they can issue a citation.

It is important to understand that if a citation to appear in court is issued by an officer, the person will not be taken away to jail in handcuffs. They will be allowed to leave the site. These offenses are crimes against the landowner and are misdemeanors that if convicted, the trespasser is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both. In reality,

jail time is rarely given unless it is for serious and or repeat offenses.

The Landowner Must Testify in Court to Successfully Prosecute Trespass

Trespass is a crime against the landowner; therefore, you will need to appear in court with the officer to verify the person was trespassing. Experience has shown that in cases where the landowner does not appear in court to verify the trespass, the case will most certainly be dismissed. Landowners may be unwilling to appear in court due to fear of retribution, property damage, or other reasons. Therefore, before calling the police to confront trespassers, be prepared to appear in court if you want a successful prosecution.

The pressing of trespass charges will be discussed below for each of the following options: 1) Pressing of trespass charges by the landowners, and; 2) Pressing of trespass charges by police.

Pressing of Trespass Charges by the Landowner

This would only be done if you were unable to have the Maryland Natural Resources Police officer or other police officer witness the trespass. To press charges, the landowner must be able to gather sufficient information to identify the person (usually a name, address, date of birth, and general description). If the landowner is the only one witnessing the trespass, it will usually boil down to one person's word against another. Other credible witnesses will usually be needed to successfully prosecute.

With sufficient evidence, the landowner can then go to the county District Court Commissioner and swear out the charges. The Commissioner reviews the charges and, if probable cause is determined, the Commissioner issues a warrant or summons, which is served by the sheriff or police. Criminal prosecution is done by the state's attorney in that county. In order for the prosecution to be effective, the landowner (and other credible witnesses) will have to testify in court against the trespasser. The reasoning is that only the landowner can testify as to whether or not he gave permission for the defendant to be on the property.

As a general rule, landowner prosecutions are difficult and time consuming. It is best to find a way for the NRP officer to witness the trespass and carry the prosecution.

Pressing of Trespass Charges by Police

The Maryland Natural Resource Police will issue a citation for trespass if they can witness the trespass. There are a number of special regulations that allow officers to issue citations in cases where the person must have written permission. This includes the hunting activities and use of off-road vehicles described below.

Off Road Vehicle Use

The Annotated Code of Maryland, Criminal Law Article 6, Section 404, restricts the operation of off-road vehicles on private property. It states:

“Except when traveling on clearly designated private driveways, a person may not operate or use an off-road vehicle on private property unless the person has in his possession the *written permission* of the owner or tenant of the property.”

The Annotated Code of Maryland, Criminal Law Article 6, Section 405, prohibits the operation of off-road vehicles on public property, unless allowed by law. It states:

“Except as otherwise allowed by law, a person may not use an off-road vehicle on property known by the person to be owned or leased by the State or political subdivision.”

If a police officer witnesses an off-road vehicle on private property and written permission is not on the person, a citation can be issued immediately. The challenge is arranging for this to happen given the quick movement of these vehicles. It is good to cooperate with other private landowners who are having similar problems so that trespassers could be cited on other private properties in the area. Some private landowners have problems with off-road vehicles entering from adjacent public lands. In this case, the officer could issue a citation to off-road users on public lands where they are not allowed, unless special conditions apply.

Hunting Activities

Hunting activities that require written permission are covered under the Annotated Code of Maryland, Natural Resources Article, Title 10-411 as follows:

“(a) A person may not upon any pretense come to hunt on the lands owned by another person without the written permission of the landowner or the landowner’s agent or lessee.”

“(b) Any person hunting on this private property is liable for any damage the person causes to the private property while hunting on the private property.”

“(c) The landowner may not be liable for accidental injury or damage to the person whether or not the landowner or the landowner’s agent gave permission to hunt on the private property.”

Written Permission on Your Person

The law states that written permission is required to hunt; however, it does not specify that the written permission must be on the person. If the police are called to confront a trespasser the person may say he or she has permission, but it is at home or elsewhere. Before a citation can be issued, the officer will have to check with the landowner, the landowner’s agent, or the lessee, to determine if the person has permission or not. This takes time and effort on part of the police, landowner, and potential trespasser. It is best to tell hunters on your property to carry written permission on their person. Otherwise, you may have to take time out of your day to verify the information. Likewise, it consumes the time of police that could be performing other duties.

The Maryland DNR Hunting Regulations offer a sample card to be used for written permission by landowners. While this card is useful, any number of types of written permission can be used, such as notes, business cards, etc. A sample is provided in APPENDIX C.

Frequently Asked Questions Involving Trespass Prosecution

The control of trespass by landowners is a common problem and may need to be dealt with in different ways for different situations. Interviews with police and landowners do provide some suggestions and approaches that seem to work with common situations.

Question 1: ATV's commonly use my property but when I try to approach them they just leave before I ever get close. They have caused extensive erosion on my roads and trails and the noise is annoying. They act like they own the place. What can I do to keep them off the property?

Opinion: The riders are probably breaking the trespass laws on a number of grounds. First, just by entering the property the riders are trespassing and can be cited since all ATV riders **MUST** carry written permission on their person, which they obviously do not have from you. Second, assuming you have posted the property with no trespassing signs or use blue paint strips, they know they are trespassing on property without permission. For the police to prosecute for trespass, they must see the offense. Rather than chase them through the woods, consider waiting until you know they are on the property and call the Maryland Natural Resource Police so they can see the trespasser. You may wish to work with your neighbors so the police could prosecute for trespass on a number of properties in the area. You will have to testify in court against the trespassers to get a conviction but this is a much better option than trying to press charges without the assistance of the police.

Question 2: I am an absentee landowner and I know people in the area hunt and ride vehicles on my property when I am gone. There has also been some vandalism at my cabin. What can I do to keep people off my property or control the trespassers?

Opinion: You should be asking the question, "*Who do I want to allow to use my property so that I know they will keep other trespassers under control?*" Find a group of local hunters or recreational users that will respect your property and your wishes and give them permission to hunt, fish, ride or use your property. In practice, they will usually take this charge very seriously and deal with others coming on to "their property", that is, the property you have given them permission to use.

Question 3: A number of friends and people who I allow to hunt the property wants a place to target shoot. I usually tell them to use the meadow but I am concerned about the possibility of bullets hitting homes that are being built in surrounding areas. Should I just not allow target shooting?

Opinion: If you allow target shooting in areas where a stray bullet may damage property or cause bodily harm you could be prosecuted for reckless endangerment (see page 19). An easy solution is to set up one area for target shooting against a hill, dirt mound, or other barrier that would not allow bullets to go any distance beyond the targets. Make it clear to all your guests that target shooting is only allowed in this area. That should solve the problem. If you find someone doing otherwise, remove their hunting privileges and/or make it clear your rules are to be followed. Also, have hunters hunt from tree stands to reduce the chance of stray bullets.

Question 4: Can any police officer issue citations for trespass or only officers with the Maryland Natural Resources Police (NRP)?

Opinion: Any police officer can issue trespass citations, but local police may lack the experience dealing with these types of cases. The Maryland NRP has the experience and knows how to handle common situations so that there is a good outcome. It is best to work first with the Maryland NRP.

Are there other Questions that should be addressed??????

Access to and Recreational Use Along Tidal and Nontidal Waterways

The laws that govern recreational use of waterways define waterways as *tidal* or *nontidal*. Tidal waters and all the land beneath the tidal waters in Maryland up to the *mean high tide* are owned by the State. Thus, recreationalists have the right to use these waters. However, they do not have the right to cross private lands to reach these waters without obtaining permission from the riparian landowner.

Private ownership along **tidal** waterways typically only runs to the mean high water mark and does not extend into the water. This point is greatly misunderstood by many private landowners. Since the State owns the water, recreationalists can boat, ski, fish, etc. Recreationalists have no right, except in an emergency, to land on the shore where ownership is private. It is important to understand that if you are dealing with tidal waters, the land exposed during low tide is owned by the State and may be used by recreationalists.

For most **nontidal** waters, the beds of the waterways are privately owned. The public has the right of recreational use of these waters, but not the land under the waters. Therefore, recreationalists can boat, fish, and ski, but they cannot anchor - this touches the bottom, which is owned by the landowner. As with tidal waters, the public may not cross private lands to reach waterways without permission.

For more information on your rights versus those of recreationalists on waterways, contact the Maryland Natural Resource Police (see Sources of Additional Information in this Bulletin).

Controlling Recreational Use of Your Property

Many Maryland landowners are willing to let others use their property at some time, for one or more types of recreation. The problem often is how the landowner can communicate his or her wishes to a passing recreationalist. The following suggestions may help you control recreational use of your property:

Post your property. Posting property in a *conspicuous manner* makes it illegal for any recreationalist to enter the property without the owner's permission. *Conspicuous* manner is defined in Criminal Law Article 6, Section 402:

- Signs placed where they may be seen, or
- Paint marks that conform with regulations that the Department of Natural Resources adopts under Criminal Law Article 5, Section 209 of the Natural Resource Article; and are made on trees or posts that are located adjacent to public roadways, public waterways, and other land adjoining the property.

The primary advantage of posting is that it provides the legal means to bring criminal charges against individuals found on the property without permission, which might discourage future trespassing. However, identifying trespassers is still a problem. Posting has the added benefit of keeping guests and others hunting on your property aware of your boundaries. Posting property as private is the proper procedure for landowners who do not want their property used by strangers. However, landowners who want to regulate use of their property should consider other options.

Posting Options

Post with paint marks. The cost and time involved with maintaining posted private land has been a constant problem for private landowners. Signs are often damaged by vandals and weather. In 1989, the Maryland Legislature adopted a posting law that allows the use of blue paint stripes, as well as signs (Natural Resource Article 5-209).

- Vertical paint marks at least 2 inches in width and 8 inches in length must be centered at least 3 feet, but no more than 6 feet, from the ground or water surface.
- The paint must be an oil-based bright blue.
- Paint marks can be put on trees or posts and must be at each road entrance adjacent to public roads, waterways, and adjoining properties. Although the distance between marks is not specified, an observer should be able to see paint marks off to each side when standing between paint-marked trees or posts. A distance of 50 ft. between signs is a good place to start.

Post “No Trespassing” signs. Many landowners may be sympathetic to recreationalists and consider posting signs with messages such as “Hunting by Permission Only,” or “Permission Only,” or “Permission May Be Granted: See Landowner.” However, court cases in Maryland find that unless the sign actually says “No Trespassing”, it will not be considered posted. If you want to have the option to prosecute for trespass, then signs must say “No Trespassing.”

Leave your property unposted. In Maryland, a landowner’s recreational liability is usually no greater on unposted property than on posted property. Landowners who are willing to let others use their property for recreation may leave it unposted. Recreationalists are not legally required to request permission to use land in open, unposted, rural area unless it is for hunting and off-road vehicles. Hunters and riders of off-road vehicles must still have written permission, although only off-road vehicle riders must have it on their person.

The landowner can still regulate recreational use of the property; for according to Maryland law, any person must leave the property upon request of the landowner, even if it is not posted.

Work with your neighbors and mark your boundaries. One of the best ways to control unwanted trespass is to set up a neighborhood watch. Common in suburban areas, they can be

very effective in rural areas also. Discuss trespass problems with your neighbors, locate your boundaries, and determine how you can work together to solve problems. Call the Natural Resource Police if you suspect poaching and keep an eye on your neighbor's property, as well as your own.

Lease with a hunt club or group of hunters at no charge. Many landowners are frustrated each hunting season in their efforts to keep unwanted hunters off their property. They usually ask, "How can I keep people from trespassing on my property." This is really the wrong question. They should ask, "Who will I allow to recreate on my property."

It is becoming increasingly difficult to find private land to hunt, fish or carry out other recreation. If you give a group of recreationalists permission to use your property (many will post it for you as well), they will usually take their good fortune quite seriously and make it clear to any trespassers that they alone have permission to use the property. This can easily eliminate trespass problems and reduce vandalism and the need to contact police. The landowner is secure in knowing a responsible group of individuals will respect his or her property rights. To properly implement this approach, develop a hunting lease that clearly states each party's responsibilities (see Appendix A). Inform your insurance company of this arrangement. Even though no money changes hands, and the recreational statute will apply, you may ask that the hunt club carry their own liability insurance policy with you named on the policy (see Appendix B).

Reinforce posted instructions. If a few recreationalists whom you can identify are trespassing and causing you problems, there are several steps to consider.

- First, you may approach these recreationalists and try to work out a solution.
- Second, a local hunting and fishing club, snowmobile club, or neighbor may be willing to help you reach and inform the recreationalists who are causing problems.
- Third, you may ask these recreationalists to leave, and, by law, they must.
- Finally, if all else fails, call the Natural Resource Police to witness the trespass when you know they are on the property and a citation can be issued and the trespassers prosecuted.

Reckless Endangerment and the Recreationalist

Landowners need to make hunters and other recreationalists aware that improper conduct on private or public property could be prosecuted under the Criminal Law Article 3, Subtitle 204. This law carries much higher penalties than other misdemeanors mentioned previously, such as trespass.

- a) A person may not recklessly:
 - 1) engage in conduct that creates a substantial risk of death or serious physical injury to another; or
 - 2) discharge a firearm from a motor vehicle in a manner that creates a substantial risk of death or serious physical injury to another.

- (b) A person who violates this section is guilty of the misdemeanor of reckless endangerment and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

Some hunters may carry out target practice or shoot their gun where there is not an adequate backstop to stop bullets or they are unsure what lies in the distance. Rifle bullets or shotgun slugs can go a mile or more so that those shooting must be sure there is nothing in the distance such as homes and other populated areas where people or property could be damaged. Hunting from tree stands minimizes this problem since bullets will usually hit the ground within a short distance. The Article clarifies that shooting out of a motor vehicle is grounds for reckless endangerment.

Controlling Timber Trespass

The increase in the value of stumpage (price paid to landowners for standing trees) over the last few decades has greatly increased the likelihood trees may be cut without your permission. The Annotated Code of Maryland, Natural Resources Article, Title 5-409, protects landowners from pilfering of marketable trees and timber. It reads as follows:

“Any person...who willfully, negligently, recklessly, wrongfully, or maliciously enters upon lands or premises, in order to cut, burn, or otherwise injure or destroy, or cause to be cut, burned, or otherwise injured or destroyed, any marketable trees or timber on the land is liable to the party injured or aggrieved in an amount *triple the value* of the trees or timber cut, burned, or otherwise injured or destroyed.” The damages are recoverable in a civil action, as in any other case.

In Maryland, if someone cuts your trees without your consent for any reason the law makes it possible to recover triple the value of the timber cut, even if the boundaries are unmarked. However, the time, money, frustration, and conflict with your management objectives for the land affected are difficult to compensate. The following suggestions will help to minimize the chance of timber theft on your property:

- **Locate and mark your property boundaries.** Fact Sheet 619, “How to Determine Your Property Boundaries,” available from your local Cooperative Extension Service office, provides detailed information.
- **Use a professional forester when selling timber.** If you wish to sell timber or are approached by a timber buyer to sell timber, use the services of a professional. In Maryland, professional foresters (state, consultant and industrial) are licensed and must have a four-year forestry degree and some experience. Each is issued a professional forester registration number that you can ask to see. You can call the Maryland Board of Licensing to verify the number is you wish.

Consultant foresters act as your agent in the sale and will mark the sale area and trees to be cut, and determine their value. Competitive bids can be solicited from timber buyers and the consultant will work with the logger to assure only marked trees are cut and that no cutting occurs on adjacent property. Industrial foresters work for a specific company and provide a range of services useful to private landowners. A list of professional foresters can be found at www.naturalresources.umd.edu . For more information see *Extension Bulletin 367, Marketing Forest Products: Understanding the Sales Process,* available from your local Cooperative Extension office or the above website.

- **Gate access roads.** Consider installing gates on access roads to your property that may be used by persons seeking to take trees, hunt without permission, etc. This is especially important for landowners who do not live on the property.
- **Cooperate with your neighbors.** Work with your neighbors to locate and mark boundaries. Ask your neighbors to inform you of any upcoming timber harvesting, unusual activities, or problems they may notice.

Developing a Lease Hunting Enterprise

Lease hunting is an arrangement whereby the landowner grants the right of access (for a specified time period) to the hunter, for the purpose of hunting in exchange for services, goods, or fees. Lease hunting is well-established in most southeastern states, but is still developing in the northeast. With the dramatic increase in deer populations and damage to crops, as well as increased demand for recreational hunting, farmers are looking to lease their land for hunting to reduce the deer herd and provide additional income. In many cases, the income from recreational hunting can be higher than the income from farm crops.

Surveys of private landowners and hunt clubs to determine going market rates per acre or day for different wildlife species have yielded poor results and are usually estimates or based on anecdotal information (see Table 1). Private landowners are unwilling to provide this information because many times it is not declared as taxable income, while hunt clubs feel if going market rates are made available to landowners, they may have to pay more than they already pay. Talk with other landowners; hunters; or your local extension agent, forester, or wildlife biologist to find out what the going rates are in your area.

Table 1. Income Estimates from Hunting on Private Land in Maryland (Kays, 2008).	
Deer and Turkey	\$8 - \$30 per acre per year
Quail and Rabbit	\$ variable
Dove	\$50 per hunter per day
Geese	\$50-100 per person per day \$2,000-3,000 per blind per year \$3,000-6,000+ per farm per year

Landowner Benefits

Landowners receive many benefits from implementing a lease hunting enterprise. These include:

- reduction in vandalism and better trespass control; increased income;
- investment by hunt clubs in roads, graveling, drainage culverts, fence building, patrolling, etc.;
- improved wildlife management to control numbers and quality of deer and other wildlife; and
- improved profitability on marginal farms.

Tradeoffs for Landowners - Disadvantages

Lease hunting has tradeoffs for landowners that must be considered. It may not be a feasible alternative for some landowners because it requires additional investment and management effort in the following areas:

Liability Status. An increase in landowner liability is a major reason why lease hunting fails to develop into an economic enterprise. However, this problem can be adequately addressed by requiring hunting club liability insurance with the landowner named as an additional insured on the policy. This will cover the cost of legal fees and judgments, though judgments are rare.

Increased Time and Money Investment. Lease hunting is a business and requires careful management to keep it profitable. Machinery, establishing and maintaining wildlife habitat, and eliminating hazardous conditions are just a few things that require time and money investment.

Changes in Farm Operation. Entertaining the public may require changes in farm operation to prevent conflicts with other uses and land management practices. Charging for hunting access may mean changing the way landowners, relatives, neighbors, and friends hunt on the farm.

Increased Resentment. Relatives, neighbors, friends, and hunters may have ill feelings and resentment because land formerly hunted upon for free is now managed under a lease arrangement. Absentee landowners are especially exposed to vandalism by disgruntled local people.

Developing the Enterprise

A successful hunting lease enterprise requires a thorough resource inventory, application of sound business management practices, adequate liability insurance, and a well-planned marketing program.

Resource Inventory

An evaluation of the wildlife on your land is a first step in a resource inventory. Make a list of game species that use the property, their number and movements. Map out areas appropriate for hunting of specific species. For example, mature forest with many squirrels, or old fields for rabbit, quail, or dove hunting. Separate leases for individual species can be developed. Contact the Maryland DNR Forest Service or a private consultant forester to have a Forest Stewardship Plan developed for the property. This plan will suggest management practices that can improve wildlife habitat for specific species. For example, a forest thinning to improve mast production can improve food for squirrels, deer, and turkey.

Surrounding land use and ownership patterns need to be considered. If the property is small in acreage, consider working with adjoining landowners for the purpose of managing wildlife and attracting hunters.

Inventory your human resources for the lease hunting enterprise. A family member who is good with numbers could handle the bookkeeping, while another may be better at working with people

and be better suited for developing and implementing a marketing plan, meeting with hunters, and mediating problems.

Business Management Practices

A hunting lease enterprise should be treated as any other business. Failure to do so may result in problems that could have been avoided.

Develop a written lease. Many of the conflicts that arise between hunters and landowners can be prevented and a good relationship maintained by having a written lease. A sample lease is provided in Appendix A. The following lease provisions (adapted from Allen, et al, 1985) provide items to consider:

- 1) The *name and address* of the landowner (the lessor) and the party to whom he/she is leasing (the lessee). The lessee may be an individual or group of individuals, or it may be a hunting club, sportsman's association, fishing club, birdwatching society, or any other recreational group.
- 2) A statement of the purpose of the lease; for example, "To allow exclusive rights to hunting deer and turkey on my land," or perhaps "To allow the lessee to horseback ride on my mountain property." The purpose can be one of the many activities listed.
- 3) A description of the property being leased. This should include a description of any areas off-limits to the user, including safety zones around barns, buildings, and pastures. Ideally, the lessees will be given a map of the property showing the areas they may or may not hunt or otherwise use. An actual tour of the property is recommended, not only to point out the boundaries of the leased land, but to show the lessees any hazardous areas of the property.
- 4) The *term* of the lease: how long is it in effect? A term of one year or greater requires a written lease. The landowner may wish to lease monthly or by hunting season, although a yearly lease is most common.
- 5) The *rent* the lessee must pay to the landowner. The amount of rent should be stated together with how it is to be paid (monthly, by July 1 of each year, etc.). Penalties for late rent may be included.
- 6) A *damage deposit* to cover any damage the lessee does to the property that is not repaired. This deposit will be returned to the lessee if damages do not occur.
- 7) A provision for *canceling* the lease can be included. This would be important if the lessee constantly violates provisions of the lease by littering, leaving gates open, or using off-limit areas of the property.
- 8) Will the lessee be permitted to *assign* or *sublet* the leased rights? If not, put it in writing in the lease.
- 9) The *lessee's duties* under the lease. Suggested duties may include closing gates, repairing broken fences, or evicting trespassers.

10) The *lessor's duties* under the lease. These may include a duty to maintain bridges or roads, keep gates unlocked, or provide other facilities.

11) Landowners may want the lessees to provide proof that they have *liability insurance*, or get the insurance themselves and pass on the cost. Make sure the policy being offered is noncancellable.

12) An *indemnity clause* in the lease may protect landowners from liability if someone is injured on their land. The legal effect of indemnity clauses varies from state to state.

Putting all possible sources of disputes into writing can save headaches later and help promote a good relationship between the landowner and the recreational user. The following provisions are additional suggestions landowners may want to incorporate into their leases:

13) A limit on the number of guests the lessee may bring onto the property at any one time. The landowner should consider the size of the property, access, parking, and amount of wildlife when deciding how many visitors to allow.

14) Landowners may want to reserve the right to hunt on their own land, or perhaps allow their family and guests to hunt.

15) The landowner may want to limit the numbers of a particular species that may be killed, in accordance with proper wildlife management.

16) There may be provision in the lease indicating that the lessees are responsible for any damages caused by their presence on the property. This may include broken fences, litter, or injured livestock. Penalties may be monetary, or repair and replacement may be required.

17) A provision for *renewing* the lease could be included, assuming both parties are satisfied with the relationship.

18) It should be stated in the lease which party is responsible for *posting* the property and patrolling to prevent trespassers. Preventing trespassers can be a joint effort, with the landowner responsible during those times when the lessee is not on the property.

19) Landowners may wish to restrict the cutting of timber on their land. Some lessees will assume a lease gives them the right to remove timber for home use. If this is not included, put it in the lease.

20) A limit on the number of campers or recreational vehicles may be desired. The landowner may want to prevent overnight camping altogether, restricting the use of the land to daytime use only.

21) Is the lessee permitted to build shelters or cabins for overnight stays? The landowner may want to provide shelters or cabins in order to attract out-of-town visitors. If cabins are provided, or the landowner allows them to be built, which party is responsible for maintaining them?

22) The landowner may want to restrict the use of four-wheel drive vehicles, or limit their use to existing roads.

23) Does the landowner intend to allow target practice and sighting-in of firearms on the land?

24) The landowner may want to prohibit the use of dogs, or restrict their use to certain times and areas.

25) If the lessee violates state hunting or fishing laws, the landlord may want provisions to allow termination of the lease.

26) It is helpful to include a property map in the lease, showing boundaries, safety zones, and other areas off-limits to the lessee. Also, the map can help the lessee locate and avoid any known hazards or dangers.

27) In order to know when others are using the property, landowners may wish to require all users to check in and check out at the landowners' house, or perhaps notify the landowner in writing or by phone prior to entering the property.

28) The landowner may want to require hunters or fishermen to report numbers, sizes, and locations of all game killed to help provide better wildlife management.

29) Proper game management will also be an important consideration in the long-run success of a land leasing program. Over- or underharvesting of game will reduce the quality of the hunting experience. Landowners may want to include in the lease a provision allowing them to take certain actions in the interest of proper game management, including setting bag limits, reducing a season, or requiring that a certain number of does be harvested.

30) A landowner who has found a responsible and conscientious lessee may want to provide for automatic lease renewal. If lessees know they will have access to the land for a number of years, they will be more willing to provide long-term improvements, such as cabins, bridges, and roads. As each party grows comfortable with the other and the lessee grows familiar with the land, the overall quality of the experience will be enhanced.

31) Even with a thorough lease, disputes can arise. Many leases provide for the arbitration of disputes, with neutral observers (arbiters) serving to judge any disagreements or misinterpretations. Potential arbiters could be local attorneys, game wardens, county agents, or other landowners.

32) Landowners may want to consider the effect of a recreational lease on their ability to sell the land should they choose to do so. Provisions can be made in the lease for termination of the lease on the sale of the property. Prior notification to the lessee of an impending sale would be thoughtful, allowing the lessee to make other arrangements.

33) Similarly, the lease can provide that if the lessor dies during its term, then the lease is or is not binding on the heirs.

Types of leases. There are four basic types of leases: 1) short-term, 2) annual lease, 3) seasonal lease, and 4) brokerage.

1) *Short-term lease*-grants hunter access rights to the leased property for a day, weekend, or week. It will bring higher average net returns per acre, but is the most expensive agreement to the landowner in terms of business management costs and requires the greatest interaction with the user.

2) *Seasonal Lease*-allows hunting during the entire legal season for a particular species of wildlife. It may include the combination of all game species, or it could separate them by species or season. For example, in Maryland, there are separate bow, firearms, and muzzle loader seasons for deer.

3) *Annual Lease*-grants access to the land for the entire year. In addition to hunting privileges, this agreement may include other recreational privileges throughout the year, such as hiking, camping, and fishing. Annual leases are especially attractive to corporations, which often utilize the lease to entertain clients, deducting the lease cost as a business expense.

4) *Brokerage*-a broker acts as a go-between to secure the hunting rights from many farms, advertises the hunting opportunities, and directs the hunters. Their services may include such amenities as room and board, guide service, dogs, and game cleaning. Landowners with farms too small to sustain intense and frequent hunting can participate in a cooperative program managed by a broker. Others who do not want the inconvenience of attracting and catering to clientele may find the brokerage arrangement desirable because it minimizes landowner obligations and responsibilities.

Regardless of the type of lease used, landowners have less control of the hunting as the lease period increases and personal contact with hunters decreases.

Who Should Sign the Lease?

To have full legal standing the lease should be signed and witnessed by a notary by the lessee and the lessor. In most cases the lessee is a group of hunters or recreationalists that are not incorporated. Therefore, it is best that each person who will be under the agreement must sign and notarize the lease. Otherwise, if there is an incident the person could say I didn't sign that lease and I am held to its conditions. If the club is incorporated, then one person can represent the corporation (the club). The members of the group would be included on the charter.

Many lessors consist of multiple landowners. For example, family members may have purchased the property together. Similar to the lessee's, all landowners need to sign and notarize the lease. The effort to get all these

Advertising Examples:

Bowhunters wanted to hunt 15 acres of prime woodland and old fields – deer season only. Responsible hunters only apply. Call Bob at 301-555-4396

Don't shoot where you are not supposed to. Lease me 10 acres for the year, all the hunting you can stand – deer & turkey. 301-555-9623

Great spot for hunting – year round lease for licensed hunter, lots of game, easy access, meadow for camping. Total of 25 acres. For more info call Doug at 301-555-1409

ATTENTION HUNTERS!

40-acres of prime deer and turkey hunting; 25 acres mature hardwoods, 15 acres crops and pasture. Garrett County. Will lease HUNTING PRIVILEGES to right group. Call 301-555-6923

signatures can be cumbersome, so it is best to develop a lease for a number of years, and provide the option to terminate the lease by a letter from the lessee or lessor within a certain time period.

Adequate Liability Insurance

As with all enterprises, hunting lease liability insurance is essential because there is no liability protection under the recreational statute. Insurance companies will usually pay for the damages resulting from a judgment (up to the limits of the policy) and the cost of your legal defense. Your regular insurance company may be able to offer you a policy, but many times these policies can be very expensive and make the charge for use impractical. It may be worthwhile to deal with a company that has expertise in dealing with clients with hunting enterprises or other recreational uses. Make sure any policy you get is noncancellable.

More and more companies are offering this type of insurance as hunting lease enterprises become more common in the Mid-Atlantic area. Many forestry and wildlife associations also offer group insurance policies to their members through an insurance carrier. The rates, terms, and minimum premium of these association policies are usually better than if the landowner were to purchase the insurance directly from the insurance company providing the association coverage. A few of these companies and organizations are found in Appendix B. However, because more and more of these policies are becoming available, landowners should do some research before choosing a policy.

Marketing

People are willing to pay substantial amounts of money to gain access to wildlife located on private land, rather than utilize public hunting areas. Since lease hunting is relatively new to some areas of Maryland, landowners need to aggressively inform hunters of the existence of lease hunting opportunities.

Advertising. A landowner leasing land for the first time might consider personally contacting friends and local hunters to give “first refusal.” This action can help reduce potential resentment and ill-feelings of local hunters who previously hunted the property for free.

Advertising should be targeted to attract the type of hunter desired. If you, as a landowner, want “professional lessees” like doctors and lawyers, advertise in their trade magazines. If advertising for bowhunters, target specific magazines and publications for this type of hunter. If a wider audience is desired, run an ad in a nearby city paper or local paper. There are many websites for forestry and wildlife organizations that take advertisements. Consider developing a brochure or video of the operation and distribute these to potential clients who respond to ads.

Personal relations. An important aspect of marketing is the personal relationship between the landowner and hunter. Many agricultural producers who have land available for hunting leases sell their products to intermediaries through established markets. A hunting enterprise is more like a retail service and the landowner must feel capable of dealing directly with consumers. If a landowner is unable to tolerate extended contact with hunters, he or she should consider using a go-between, such as a neighbor, friend, relative, or broker, to handle the lease arrangements.

Recreational Experience. The purchase of a hunting lease for most hunters is an investment in an opportunity for a pleasant recreational experience and not the purchase of a commodity (dead game animal). Successful management of the hunting lease must assure the customer a pleasant experience. One study found the three most important factors affecting a hunter's decision to pay a fee to hunt deer were: 1) fewer hunters; 2) safe hunting; and 3) restrictions to ensure that other hunters would behave in a sportsmanlike manner.

Other actions that involve little or no cost, but return benefits to the landowner include a trash can for use by hunters, a map showing how to get to the property from a major interstate, a map of the property showing hunting and nonhunting areas, and a summer newsletter to hunters to inform them of game conditions. Because many hunters may never have enjoyed a meal of well-prepared game, a game supper for the hunters during the hunting season can produce tremendous goodwill.

Sources of Additional Information

- 1) For individual questions of liability and land ownership, contact your lawyer or your insurance agent.
- 2) For specific requirements under Maryland Law, contact your local Maryland Natural Resource Police officer (in the phone book blue pages under State Government-Department of Natural Resources). For statewide general information, call (410) 260-8890. <<http://www.dnr.state.md.us/nrp>> .
- 3) For information on developing a Forest Stewardship Plan for your property to improve wildlife habitat and other forest benefits, or for publications and educational programs, contact:
 - your local Maryland DNR Forest Division office (in the phone book blue pages under State Government Department of Natural Resources). For statewide general information, call (410) 260-8531. <<http://www.dnr.state.md.us/forests>> .
 - your local Cooperative Extension Service office (in the phone book blue pages under County Government-Cooperative Extension Service or University of Maryland). Forestry Extension program contact numbers: (301) 432-2767 or (410) 827-8056. <<http://www.naturalresources.umd.edu>> .
- 4) For information on wildlife management or joining the Cooperative Wildlife Management Program, contact a regional DNR wildlife biologist (in the phone book blue pages under State Government-Department of Natural Resources). For statewide general information, call (410) 260-8540. <<http://www.dnr.state.md.us/wildlife>> .

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APPENDIX A – Sample Hunting Lease – Season Lease
(May be used for season lease)

State of Maryland

County of _____

Subject to the terms and conditions set forth in this document,

_____ (hereinafter called LESSOR) does hereby grant to _____ (hereinafter called LESSEE) the right to access and hunt only the following game species:

LIST SPECIES

which may be found upon and harvested from the following property(s).

DESCRIBE PROPERTY

(Refer to an Attached Map)

treated as comprising a total of _____ acres, more or less.

The term of this lease shall run from (date) _____ to (date) _____.

The LESSEE hereby agrees to:

Pay to the LESSOR the sum of (\$) _____ per acre, totaling (\$) _____ on or before (date) _____.

Allow LESSOR to hold in deposit the sum of (\$) _____, refundable at the termination of this lease if the lease agreement has been adhered to and no damages have been placed upon the LESSOR as a result of the actions of the LESSEE.

Abide by hunting regulations prescribed by LESSOR.

Abide by all state and federal hunting regulations.

Harvest game species only in accordance with HARVEST PLAN prescribed by LESSOR.

Be personally responsible for the actions and activities of all persons hunting under this lease and to act as a representative in matters regarding all activities carried out under this lease. Maintain proper safety procedures regarding firearms, particularly by seeing that all firearms are unloaded while in vehicles and in vicinity of all buildings.

Maintain proper vigilance aimed at preventing fires or damage by other means to the leased area. See that vehicles are driven only on established roads and to see that all gates are left as originally found.

Maintain a “No Hunting” or shooting zone within 200 yards of any occupied building and around all other designated areas.

Keep records of all game harvested and supply these records to the LESSOR.

Remove all structures placed or constructed by LESSEE from the lease area at termination of this lease unless prearranged with LESSOR.

Limit number of hunters so not to exceed _____ with number on lease property at any one time not to exceed _____.

Provide the LESSOR with a current certificate of insurance covering the LESSOR, LESSEE and all guests of the LESSOR against damages and liabilities. Coverage shall be in at least the amount of \$1,000,000.

Abide by all written rules and regulations supplied at the onset of this agreement.

The LESSOR hereby agrees:

That only the LESSEE and his GUESTS shall have hunting rights on the leased area during the term of this lease except those reserved as follows:

Quotas of game species offered the LESSEE be reasonable and equitable, commensurate with the management goals established for the leased area and compatible with regulations of the state of Maryland.

Note: If quotas are established, they should be attached and referred to in the lease document.

To establish a game harvest plan and hunting harvest quotas, after consultation with LESSEE, and advise LESSEE of the quotas for leased area, or portions thereof.

Note: If a game harvest plan is established, it should be attached and referred to in the lease document.

Agricultural and/or forestry practices are necessary on the premises and take precedence over the rights given in this agreement. Hunting shall not interfere with any such practices.

It is mutually agreed that failure to abide by the terms and stipulations above by any person present on the leased area under this lease will constitute cause for the forfeiture of all hunting rights, deposits and fees.

LESSEE shall not assign or otherwise convey any rights granted by this agreement to other persons without the expressed written consent of the LESSOR.

The addresses of the parties hereto for the communication of notices are, unless altered by written notice, as follows:

For the LESSOR:

For the LESSEE:

This agreement automatically will be renewed on an annual basis unless written notice is delivered on or before (date)_____.

In case any one or more of the provisions contained in this lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, all other provisions and this agreement shall be constructed as if such invalid, illegal, or unenforceable provision has never been contained herein.

This agreement shall be constructed under and in accordance with the laws of the state of Maryland.

Lessee recognizes the inherent dangers associated with hunting, both natural and human-created. Lessee recognizes that accidents involving firearms, ammunition, falling trees, hidden ground openings, poisonous plants and animals and various other dangers may forcibly occur on the premises aforementioned. Lessee acknowledges his/her recognition of these dangers and the possible existence of dangerous physical conditions upon the premises such as, but not limited to, those described on the enclosed map. With the aforementioned recognitions in mind, lessee agrees to indemnify and hold harmless landowner and all of his/her family, servants, employees and agents from all claims, suits, losses, personal injuries, deaths, property liability and all other liability resulting directly or indirectly from or on account of hunting activities engaged in by lessee or lessee's guests on the premises heretofore mentioned, said obligation to indemnify extending to the reimbursement of landowner for all expenses and suits including but not limited to, judgements, attorney's fees and court costs.

Note: This liability release must be on the same page as the signatures and it is the landowner's responsibility to insure that each lessee has read and understood its meaning. The release clause in Appendix B may be substituted here.

Executed in duplicate on this _____ day of _____, 20_____.

Lessor

Lessee

Lessor

Lessee

Lessor

Lessee

Note: If the hunting group is not incorporated, all hunters should sign the lease agreement and have their signatures notarized.

APPENDIX B – Sample Hunting Lease – Short-Term
(May also serve as the access permit for short-term agreements)

State of Maryland

County of _____

Subject to the terms and conditions set forth in this document,
_____ (hereinafter called LANDOWNER) does
hereby grant to _____ (hereinafter called
PERMITTEE) the right to access and hunt only the following game species:

LIST SPECIES

which may be found upon and harvested from the following property(s).

DESCRIBE PROPERTY

(Refer to an attached map)

The term of this permit shall run from (date) _____ to (date) _____.
The PERMITTEE hereby agrees to:

Pay unto the LANDOWNER in advance a fee of (\$) _____.

Abide by all state and federal hunting regulations.

See that vehicles are driven only on established roads and to see that all gates are left as originally found.

Maintain a “No Hunting” or shooting zone within 200 yards of any occupied building and around all other designated areas.

Keep records of all game harvested and supply these records to the LANDOWNER.

Remove all structures placed or constructed by PERMITTEE from the property at termination of this lease unless prearranged with LANDOWNER.

Abide by all written rules and regulations supplied at the onset of this agreement.

LANDOWNER will not authorize a number of persons in excess of _____ to hunt on this tract during the period of this permit.

This agreement shall be constructed under and in accordance with the laws of the State of Maryland.

I, the undersigned PERMITTEE, do hereby assume all risks associated with hunting (and/or any other intended activity) and do hereby release _____ and all their properties and their agents of any and all negligence.

Executed in duplicate on this _____ day of _____, 20 _____.

LANDOWNER

PERMITTEE

APPENDIX C – Hunting Permit

(May be used for courtesy hunting permit when written permission is required.)

HUNTING PERMIT

Date: _____

To whom it may concern:

The bearer of this permit, _____,
has permission to hunt on the following property:

(Name of Farm or Property)

Located at:

During the period:

_____.

He/she agrees to obey the current state and federal hunting regulations and to repair or pay for any property damages which may be caused. He/she has been shown the property boundaries and agrees not to hunt on adjacent properties without written permission.

Landowner: _____

Permittee: _____

The authors acknowledge that some the information presented in the Appendices in this publication was modified and/or adapted from:

- Harper, C.A., C.E. Dixon, P.M Jakus, and D.A. Barefield. 1999. Earning additional income through hunt leases on private land. UT Extension, PB 1627. 16 pages.

APPENDIX D - Selected Sources of Liability Insurance for Hunt Clubs and Other Recreational Enterprises

Most of the information below is for hunt clubs; however, some of these companies will provide similar coverage for other recreational enterprises (sporting clays, hunting preserves, outfitters, etc.), as well as product liability. This is not meant to be an exhaustive list of insurance providers. Many forestry and farm associations offer insurance plans for their members. Check in your area for other providers.

Buckmasters Liability Insurance

PO Box 244022
Montgomery, Alabama 36124-4002
Phone: 800-240-3337
Web: <http://www.buckmasters.com>

Davis-Garvin Agency, Inc.

PO Box 21627
Columbia, SC 29221
Phone: 800-845-3163
Fax: 803-781-6712
Web: <http://www.davisgarvin.com>

Forest Landowners Association, Inc.

Hunting Lease Liability Insurance
900 Circle 75 Parkway
Atlanta, GA 30339
Phone: 800-325-2954
Web:
<http://www.forestlandowners.com/insurance>

National Woodland Owners Association

374 Maple Avenue E, Ste 310
Vienna, VA 22180
Phone: 703-255-2700
Web: <http://www.woodlandowners.org>

Maryland Forests Association

Hunting Lease Liability Insurance
P.O. Box 599
Grantsville, MD 21536
Phone: 301-895-5369
Web: <http://mdforests.org/davisgarvin.htm>

National Rifle Association Hunt Club Insurance

NRA Endorsed Insurance Program
Property & Casualty Plans
PO Box 410679
Kansas City, MO 64141-0679
Phone: 877-487-5407
Web:
<http://www.locktonrisk.com/nrains/index.asp>

Outdoor Underwriters, Inc.

PO Box 6336
Wheeling, W 26003-0055
Phone: 866-695-9040
Fax: 740-695-9053
Web: www.outdoorsinsurance.com/

Outdoorsman Agency

8501 Turnpike Drive, Suite 200
Westminster, Colorado 80031
Phone: 800-849-9288
Fax: (303) 428-5900
Web: www.outdoorinsurance.com

Reviewed by:

- Lt. Paul Hanyok, Maryland Natural Resource Police
- Paul Peditto, Maryland Department of Natural Resources Wildlife & Heritage Service
- Attorney General's Office, Maryland Department of Natural Resources

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