

Legal and Liability Concerns

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PLANNING RECREATION OPPORTUNITIES FOR INCOME AND TOURISM

Liability and Protection in Private Outdoor Recreation



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Foreword

This publication is designed largely for the landowner, farmer, rancher, non-farmer or potential guide who is not trained or experienced in operating a recreation business.

Principles of liability and insurance protection will apply to most recreation enterprises regardless of the size of the operation. The objective is to identify these principles and to show how they apply. It is our special hope that this work will encourage potential recreational operators to discuss this phase of business management with legal counsel and insurance representatives prior to any investment commitment.

Special appreciation is given to Mr. Robert Y. Thorton, State Attorney General (1968) and his staff for reviewing this publication and giving the author some valuable guidance.

If you need additional assistance feel free to contact your County Extension Agent. Assistance is also available from the Soil Conservation Service, Farmer's Home Administration, Forest Service, Agricultural Stabilization and Conservation Service, State Highway Department, State Parks Division and the State Game Commission.

Robert L. Wilder
State Extension Specialist
Outdoor Recreation

LIABILITY AND PROTECTION IN PRIVATE OUTDOOR RECREATION

Age of Recreation Opportunity

This is the age of recreation opportunity. The past few years recreation has been very much in the limelight due primarily to concern for increasing leisure, more vacations, shorter work weeks and days, greater freedom through greater mobility and greater income. These all relate back to and imply greater livability for the individual.

A continuing high demand for outdoor recreation opportunities in an increasingly urbanized and affluent society, along with the changing pattern of public land-use policy, encourages the development of outdoor recreation enterprises by many landowners throughout the State of Oregon.

This publication is designed largely for the landowner, farmer, rancher, nonfarmer or potential guide who is not trained or experienced in operating a recreation business. The large scale recreation operator with all the knowledge and skills normally associated with a high investment operation generally plans for liability as a preliminary step to investment.

The principles of liability and insurance protection will apply to most private recreation enterprises regardless of the size of the operation. Our objective is to identify these principles and to show how they apply.

We hope in this publication to provide the potential or practicing recreation operator with an understanding of the basic legal concepts of liability, principles of insurance and the type of liability insurance applicable to recreation enterprises. Accident prevention and loss

reduction principles will be discussed along with the citing of specific enterprise problems.

It is our special hope that this work will encourage potential recreation operators to discuss this phase of business management with legal counsel and insurance representatives prior to any investment commitment.

I mentioned earlier the surging demand for outdoor recreation facilities has generated interest and opportunity for landowners and ambitious individuals to develop recreational facilities and services as a means of increasing income. However, with the recreation opportunity we have an increasing responsibility. Those considering recreation as an auxiliary land use or service should recognize that the operation of commercial recreation enterprise is not unlike the operation and management of any private business. There is more to the establishment and operation of the recreation enterprise than simply "collecting the money" to make the service or area available for public use.

(As soon as the recreation operator makes his land or service available for public use,) he creates many new problems. One which he must immediately face is (the liability he will incur through the operating of such an enterprise.)

The Law

Although liability suits may be involved in the ownership of any property, or the provision of any service, the operator is generally in a more vulnerable position when he charges a fee to others for the use of his property, facilities or services. The point is further emphasized in Oregon's Revised Statute (ORS 30.790) which states:

Liability of owner or person in possession of land used for

recreational purposes. (1) Except as provided by subsection (2) of this section, when the owner or person in possession of land which may be used for recreational purposes, including but not limited to hunting, fishing, trapping, camping or hiking, has granted permission to any person to enter upon or use the land for recreational purposes, neither the owner nor the person in possession of the land shall be liable for the injury, death or loss sustained by any person entering upon or using the land for recreational purposes, resulting from the condition, structures or activities on or uses of the land or as a result of an act or omission of the owner or person in possession of the land.

(2) Subsection (1) of this section is not intended to limit the duty owed by or liability of an owner or person in possession of the land:

(a) When there has been a direct business benefit conferred to the owner or person in possession of the land as a substantial motivating factor in the grant of permission for entry or use of the land for recreational purposes.

(b) In cases of willful or wanton misconduct of the owner or possessor of the land.

(c) Where an affirmative obligation exists dependent upon a relationship other than that arising from the entry or use of the land for recreational purposes.

(3) This section is not intended to apply to or affect the so-called doctrine of attractive nuisance.

(4) As used in this section, "owner or person in possession" does not include a governmental body or political subdivision or a public corporation. (1963 c. 524-1,2)

The recreation operator who desires to increase his income by operating an outdoor recreation enterprise should realize that an award in court for injuries to a patron may be enough to take all the profit from the enterprise, his life savings, his home and property.

The laws relating to liability continue to be drawn from common law, or a set of general legal principles rather than having been firmly incorporated into statute law. Because strict interpretation of the law therefore depends primarily upon the decision of a jury, this presentation will present the common law doctrines upon which liability is founded. The recreation operator is encouraged to consult his lawyer for further

interpretation of liability in the operation of a particular outdoor recreation enterprise.

Before proceeding too far in legal terminology, I would recommend you refer to the "Glossary of Terms" presented in the back of this publication to assist you.

Trends

A trend toward the extension of liability which has been proceeding both in the legislative and judicial fields for a considerable period of time. In the legislative field liability has even been imposed upon public agencies for the negligent operation of their motor vehicles, for accidents caused by the dangerous or defective condition of public property and upon school districts for general negligence on the part of their employees.

Insurance companies report an increasing public awareness of liability, resulting in "claim conscious public." The increase in the amount of claim settlements awarded by courts in recent years, and the tendency for court decisions to favor the plaintiff or injured patron, shows the operator of the recreational facility cannot afford to risk operation without protection against liability claims or law suits. The recreation operator should protect himself against these types of judgements by: (a) obtaining special liability insurance which provides legal aids in the event of law suit and (b) will pay any claim or awards by the court up to the limit of the policy.

In most cases the ordinary personal liability policy or the general farm liability policy will not provide coverage for liabilities incurred through the commercial operation of recreational facilities or services.

This being the case, the recreation operator should obtain additional insurance protection before he invites the public to sample what he has to offer.

Negligence

"Negligence" is defined as the essential element that must be proved before a person can be legally held liable for unintentional injury to others. The law of negligence is based on precedent as established by previous court decisions.

Negligence is generally considered to be the omission by an individual to do something which a "reasonable man" would do under similar circumstances; conversely, negligence may be the act of doing something which a reasonable and prudent man would not do. The standard used to determine negligence then, is the behavior of "a reasonable and prudent man."

In court, it is this hypothetical "reasonable man" against whom the defendant's action is measured. It will be up to the jury to determine if the individual has acted in agreement with this standard. If the jury decides that the defendant's behavior does not measure up to that action expected of a reasonable man under similar circumstances, the individual will almost certainly be held liable.

Negligence is further gauged by one's ability to anticipate danger. Thus, the foreseeability of danger is an important factor in determining liability.

Generally, if the unintentional injury is the result of a danger which could be foreseen by a reasonable man, and thus avoided, the operator who failed to see the danger or failed to act may be held liable for damages because of negligence. When a jury decides that an injury

could not have been foreseen nor prevented by reasonable precaution, usually the operator will not be held liable.

Unavoidable accidents do happen, and where there is no negligence, such accidents do not form the basis for legal action. The outdoor recreation operator must also consider that negligence could be found even where he has taken careful consideration and precaution in conformity with his own best judgement. In such a case, if a jury decides that the operator's judgement falls short of what a reasonably prudent person would have done under similar circumstances, the operator may still be held negligent and legally liable.

Lewis F. Twardzik and Richard E. Cary¹ find the following elements of negligent action. They stressed that the successful maintenance of a negligent suit requires consideration of more than just conduct. Most legal authorities concur that four general elements are necessary to support a negligent suit. These are:

- (1) A legal duty to conform to a standard of behavior to protect others from unreasonable risks.
- (2) A breach of that duty by failure to conform to the standard required under the circumstance.
- (3) A sufficiently close casual connection between the conduct of the individual and the resulting injury to another.
- (4) Actual injury or loss to the interests of another.

Duty

An individual's duty is recognized in the courts as an obligation to use reasonable care to prevent exposing another to unreasonable risks of

injury when the relationship between the two parties is of a nature to warrant such duty.

The failure to conform to a behavior or standard of a reasonable man would be a breach of duty. Negligence will not be maintained unless there is a duty to use reasonable care and a breach of this duty. Therefore, not every accident resulting in injury will mean that liability exists, for injury or damage alone is not adequate support for legal action.

In support of negligent action, the causal connection must establish that the defendant's act of omission or commission was a contributing factor in bringing about the damage to the plaintiff. In order for the defendant to be held liable, it must be proven that he has, in fact, caused the injury to the plaintiff. Once it has been established that the defendant's conduct was one of the causes of injury to the plaintiff, it must be further determined that there were no intervening acts or events, such as an Act of God or the negligence of a third person. In many cases, if such intervening acts make the causal connection between the defendant's behavior and the resulting harm seem too remote, then there will be no liability.

It must be shown that damage or injury actually happened to the plaintiff before negligent action may be taken. Damages cannot be recovered from a law suit without proof of such damage or injury.

The Land Owner

One who has physical possession of the land or real property is known as the possessor. He may be a fee simple owner, a renter, or a person who is in possession of the land by some other method.

The fee simple owner is one with the highest degree of control that the law allows over the land. He is entitled to full exercise of his

powers concerning the land and he may exclude or bring persons onto the property as he sees fit.

The renter of real property has rights similar to a fee simple owner, with respect to excluding and allowing persons to come upon the property, but these rights may be modified somewhat by the rental agreement. These are the two most common types of possessors of land.

A possessor of property may voluntarily or involuntarily create relationships with other parties concerning his right to possession of property. His rights can be shared with a person who desires to enter upon the premises in various ways, depending upon such factors as permission to enter and the purpose for which entry is obtained. The person entering the premises may be classified as:

- (1) an invitee (or business visitor),
- (2) a licensee,
- (3) a trespasser.

The rights and duties owed to each type of person vary depending upon the classification in which he falls. Let's discuss them one at a time.

Invitee: An invitee is a person who comes on the land with the possessor's permission and bestows a benefit or consideration upon the possessor. This benefit may or may not consist of a fee paid to the possessor. For example, the invitee may be investigating the property prior to the payment of a fee. While doing this, he is nevertheless classified as an invitee. Usually, however, an invitee is considered to be a person who has paid a fee to enter upon the land.

In some cases it has been the opinion of the court the "indirect" payment can and does in fact make a person a paying customer. Examples of such consideration might be where an individual:

- (1) pays for all or part of the food or refreshments,

(2) gives the possessor an expensive gift,

(3) provides special favors to the possessor.

The duty to exercise ordinary care to prevent injury to the invitee is imposed upon the possessor of the land, and for a breach of this duty a law suit may be well founded. The occupier of land is not an insurer of the invitee, but he is liable for certain acts of negligence which result in injury to the invitee. Such negligence is failure to exercise care that the circumstances properly demand. For example, the possessor may be liable for injury to an invitee caused by a concealed, dangerous condition on his property, even though the possessor does not know of the condition, if it could have been known by a reasonable inspection of the premises.

A hunter who pays a fee to the possessor of land for permission to hunt upon the land is an example of an invitee. If the hunter falls into a concealed well, the possessor of the land might be liable for resulting injuries.

Licensee: A licensee is a person who enters the premises for his own purposes and with the expressed or implied consent of the possessor. The possessor is under no duty to make the premises safe or to warn of dangerous conditions unless he knows they exist and they are concealed. He is liable only for "wanton or willful" acts or "active negligence." The licensee must take the premises as he finds them. The liability proposed for injury caused by dangerous conditions on the premises is very slight. In the absence of traps or other instruments used to produce intentional harm, the liability imposed upon the possessor for injuries to licensees by reason of dangerous conditions is very limited.

An example of a licensee is a man who has permission to walk across the possessor's land. If the permission is given, then this person becomes a

licensee. If this man should fall into an unconcealed well, the possessor of the land probably would not be liable.

The possessor is liable if he carries on activities without reasonable care for the safety of the licensee and the licensee receives an injury from such conduct. However, the licensee is expected to be on the alert to discover dangers; therefore, the liability of the possessor extends only to dangers known to him which the licensee does not know about or cannot reasonably be expected to discover for himself. For example, if the possessor of land is using dynamite to clear construction and a licensee is not warned of the activity, the possessor might be liable for any injury caused to the licensee by the explosion of the dynamite.

The possessor of land can protect himself by warning of dangerous activities that are to be conducted on the land. Conduct that is normally carried on in the farming or ranch enterprise, such as operation of farm machinery, driving cattle, and other associated activities will not ordinarily create liability for injuries to licensees. The licensees assume the risk of injury from these normal activities when he enters upon the land.

The law also recognizes social custom as an aspect of liability. A neighbor who calls socially cannot ordinarily recover damages from a host for injury while on the premises, unless it can be proven that the host was grossly negligent and that this negligence contributed to the accident.

A word of caution is in order when dealing with children, for example: If the parent is a licensee, the license will usually extend to an accompanying child. Since children seem to be more susceptible to personal injury than adults, it may be unwise to permit children on the premises when a dangerous activity, such as deer hunting, is involved.

Trespasser: A trespasser is a person who comes upon a possessor's land without permission. His actions constitute a trespass.

In most states, the liability imposed upon the possessor of the land for injuries to trespassers is very slight. In absence of traps or essential harm to the trespasser, such as shooting him, there is usually court liability imposed for injuries received by the trespasser from dangerous conditions upon the land. If a trespassing hunter should fall into an abandoned well, there usually will be no liability to the possessor; or if a farmer is clearing brush by burning it, an undiscovered trespassing hunter who receives injury as a result of this activity will not be able to impose liability upon the possessor of the land. If he is discovered, reasonable care should be exercised to protect him from such affirmative activity such as dynamiting or other dangerous acts.

The courts state that the duty owed to a child is the same duty as that owed to an adult. If a child accompanies a parent who is an invitee, the child is owed all the privileges and protections owed the parent. However, the standard of care is put on a child's standard. The facilities must be reasonably safe for children. If not, any injury that may result might impose liability upon the possessor.

A child trespasser is generally treated in the same manner as an adult. He may be evicted and in the absence of intentional harm, no liability is imposed for his injury. While the foregoing is generally true with regard to trespassing children, there is one important exception--the Attractive Nuisance Doctrine.

Attractive Nuisance Doctrine

This doctrine applies when there is an attraction and children are induced to come upon the land as a result of this attraction. They are not

mere trespassers. The children are considered to have come upon the land with some duty owed to them by the possessor. The instrumentality causing damage must be inherently dangerous. A pile of lumber, pond, and other instruments of high utility and use have not been considered to be inherently dangerous.

The child must also be induced to come on the land by the very instrumentality which caused the harm. If the attraction which caused a child to trespass was the presence of a piece of machinery and he falls into an unconcealed well injuring himself while on the premises, liability probably would not be imposed upon the possessor of land.

In most states, bodies of water have not been classified as inherently dangerous instrumentalities. The presence of these resources on the average farm is considered to be a necessity. Many tourist or recreation enterprises use water in operation of the facility. However, the possessor of land may need to guard against suits for damages where children are involved because of the law of Attractive Nuisance might be applicable.

An example of the tragedy that can occur around bodies of water that attract children was recently pointed out in California.

Two small boys were playing in the vicinity of a swimming pool under construction in a County park. Because of heavy rainfall, muddy water had accumulated in the bottom of the pool and the contractor had erected only a temporary barricade around the construction area. Children playing in the park were attracted to this pool of water and played in the area at times when there was no supervision in the park. On a Sunday morning one child slipped from a scaffolding into the water, disappearing from sight. His brother jumped in after him, but since neither could swim, both were drowned before anyone could rescue them.

In retrospect, it was clear that this accident could have been avoided if the contractor had been required to either pump the water out of the pool or to erect an adequate fence around the construction area. An action has been filed and is now awaiting trial. The County took the position that since the contractor was obligated to hold the County harmless from any liability, that they could leave the responsibility for safeguarding the premises entirely up to the contractor. While the contractor may be required to hold the County harmless, this indemnity provision does not relieve the County of liability in the first instance and further does not relieve the County of its moral obligation to protect the lives and safety of persons visiting its parks.

Personal Property

At this particular point a comment should be made about personal property and the problems associated by loaning said property.

When one person gives possession of personal property to another, the former becomes a bailor (supplier) and the latter a bailee (borrower).

If the property is in an inherently dangerous condition or unsuitable for the intended use, the bailor (supplier) of property may be held liable for injuries the bailee (borrower) sustains in its use. The bailor may also be held liable for injuries caused to a third party by the bailee in the use of the instrument supplied.

If the bailor has failed to exercise reasonable care in making the property safe for the use for which it was supplied he may be held liable. For example, a bailor renting a boat that has a defective bottom may be held liable for injuries caused by such a defect to the person or other members of the party who rented it. However, the bailor may not be liable if he warned the third party of the defect, or if he did not know of the danger and

a reasonable inspection of the property would not have disclosed the defect.

When the property is supplied free of charge, there is no duty to inspect, if the bailor (supplier) did not know of the defect, he is not liable to the bailee.

If an invitee at a fishing pond borrowed a rifle which the supplier believed to be free from defect, a subsequent injury to the borrower ordinarily would impose no liability. However, a person who regularly "lends" personal property to his invitees may find that the law will not classify the transaction free of charge. If personal property is regularly loaned to customers in pursuit of business, liability may be imposed because of the benefit received by the business.

Liability Considerations

It is at once apparent that the best way of avoiding liability is to prevent accidents from occurring. Accident prevention serves in the first instance as a humanitarian practice to prevent the loss of life or injury to person. It is also obvious that where a private business operates on limited funds, money is much better used for expanding and improving recreational facilities than in paying judgments. Therefore, it is only good business to avoid accidents whenever possible. In general, accident prevention is accident foreseeability and foreseeability depends, in general, upon past experience.

Experience has shown that (certain activities and facilities create a greater risk of injury than others. Horseback riding, diving boards, and slides frequently cause accidents. The high incidence of accidents from such facilities will be reflected in higher insurance costs.) The

operator should consider avoiding liability by not providing, or taking special and extra care of, facilities associated with high risk. Not only will insurance costs be less, but there will be less chance of an accident or law suit.

Examples of special problems as they relate to specific recreation enterprises will be stated in detail later in this presentation. Cases of costly experience are now in order.

Golf Courses: Of particular interest is the large number of claims that are filed for broken windows resulting from golf balls driven from private and public operated courses. Many times it is found that a fairway has been laid out parallel to a major highway with the result that a hooked or sliced drive will carry the ball over the fence into the highway. If it is found that the course is improperly laid out or inadequate safety devices have been installed, these claims are paid without contest. On the other hand, there have been situations where a subdivision has been laid out in such a manner as to provide view lots on a golf course. In such a situation it would appear that there is a certain assumption of risk where the homeowner installs a large picture window facing onto the golf course. With the view, goes the risk of damage by flying golf balls.

✓ Animals: Of interest are claims involving animals and birds. One action was brought on behalf of a small boy who was attacked by a peacock and another claim was filed by a woman who was attacked by an angry or amorous rooster, another was a claim by a man who was assaulted by a goose. Claims have been filed for bites received from rattlesnakes, raccoons, lizards, and mice.

Trees: Trees in public parks are a continuing problem. Branches fall onto parked cars and one poor old codger playing pinochle was flattened when

a dead tree collapsed on a clear, windless day. The difficulty is in determining what trees should be removed and in doing so before damage occurs.

✓ Broken Glass: Another frequent accident is one that occurs when a small child while barefoot steps on broken glass. We have seen quite a series of these accidents which have occurred where small children have disregarded signs that say "no wading" and have cut their feet on broken glass at the bottom of lakes located in public parks.

Fences: Fences also provide a problem. The absence of a fence may render property in a dangerous or defective condition, and on the other hand, barbed wire fences and chain link fences with barbed tops can present a hazard to small children attempting to climb the fence or to ball players who run into the fence while attempting to catch a fly ball or pass.

✓ Slippery Floors or Obstructions: We have heard of many claims and accidents filed for injuries alleged to have been caused by overly waxed floors. This is true despite the fact that in many cases no wax is used at all or the wax that is used is of a nonslip variety which actually reduces the slipperiness of the floor. Smooth finished cement around pools and shower rooms, slippery sidewalks, highly waxed boat decks or carelessly placed tools and equipment all have taken their toll.

Crowds: With people come people problems. With the extension of liability it is apparent that (greater efforts must be made to supervise recreational activities and to control crowds on private and public beaches and parks.) An action is now pending against a public agency on behalf of a girl whose eye was injured when a firecracker exploded while she was sitting on a beach, it being contended that there was negligence in supervising a crowd of teenagers that had been invited by a radio station to a beachcombers ball and grunion hunt.

Methods of Accident Prevention

One means of dealing with the risk of liability is reducing or eliminating factors that may cause injury or loss. Not only will accident prevention reduce the chance of injury, but as already indicated, legal liability may be reduced through reasonable care in making the premises safe and providing safety facilities. Indeed, insurance companies are particularly interested in accident prevention programs of recreation enterprises. Before agreeing to write liability insurance, many companies will carefully consider the degree of safety built into an enterprise, as well as the awareness and desire of the operator to prevent injury. Some companies provide for premium reductions after a period of demonstrated safe operation.

Safety Program

A safety program should begin with a study of the entire area to identify existing hazards and determine methods of eliminating them through design and layout of facilities. Professional assistance should be obtained to assist in the planning and development of an enterprise. The grounds and facilities should be frequently inspected and any necessary repair or improvement promptly made. A thorough maintenance program is an important part of the safety program. The recreation enterprise should be equipped with appropriate safety precautions, particularly at swimming areas, shooting ranges, and similar places of increased danger. An operator may have a difficult time defending a claim or lawsuit if there is a lack of proper safety precautions, even though the absence of safety precautions may not be the actual cause of the accident.

Supervision

Overall supervision of the enterprise should be provided to assure maximum safety. A plan for emergency medical treatment should be prepared, including emergency communication between the recreation area and medical facilities. Insurance companies warn that the legal consequences of not doing this kind of planning can be severe.

Regulations pertaining to the use of recreation areas should be posted to provide reasonable safeguards for those who may use the area.

The possessor of land is obligated to protect an invitee from injury caused from other guests. This duty is similar to that relating to dangerous conditions and affirmative acts of negligence. It is the duty of the possessor of real estate to control the conduct of all invitees while they are on his property. Unruly invitees may be more dangerous than objects or conditions. If the possessor knows or, in the exercise of ordinary care, should have discovered a troublesome guest, he may be liable for injuries to other invitees caused by the unruly person. For example, if an invitee becomes drunk while fishing and the possessor knows of his condition, the possessor may be held liable for injuries to other invitees caused by actions of the drunken guest.

The operator of a lake or a swimming pool may be held liable for injuries to patrons caused by disorderly conduct or rough play.)

If the proprietor of a picnic area knew or should have known that his invitees were target practicing with fire arms or other weapons in a congested portion of the area, he might be held liable if a guest is injured.)

Limiting Liability

Several methods for limiting or transferring liability should be

carefully considered or implemented by the owner of property. They include warning of dangerous conditions, exclusion of unwanted guests, incorporation and carrying liability insurance.

(1) Dangerous conditions: If a person coming upon the land is alerted to possible dangerous conditions existing on the land, probably no liability will be incurred by the possessor if this person is injured by such conditions. This rule applies to invitees and licensees.

It should be noted that this duty is limited to the area of invitation--that part of the premises which is open for use to the invitee. This area extends to the entrance and safe exit from the property and to all parts of the property which are open to the invitee, or so arranged that the invitee could reasonably think they are open to him.

If a patron is free to use the premises, he will be considered an invitee unless the proprietor specifically warns the patron that the area intended for use is more narrowly restricted.

If the patron then goes outside the area specified in his business invitation, he may be considered a licensee or a trespasser, depending upon whether he goes with or without the proprietor's permission.

If a visitor is led to believe that a particular area is part of the business area intended for his use, he is entitled to the protection owed an invitee.

In view of these considerations, the recreation operator should be aware that he may reduce the chance of accident as well as his legal liability by specifically delineating the recreation area and restricting guests from barns, pastures, storage sheds, and other hazardous areas not integral to the recreation enterprise.

(2) Selective loaning: Goods should not be loaned to an incompetent.

If a gun, boat or other dangerous piece of equipment is loaned to a child, the supplier may be held liable for injuries caused in the use of the article regardless of warnings.

(3) Children considerations: Normal methods of reducing liability, such as signs and oral warnings of danger may not apply to young children. Children may not comprehend the danger involved. Some practices and devices which may reduce liability for injuries, especially to children, are:

(A) Signs should be placed at the entrance of facilities reminding parents that children should be under their control at all times. An attentive parent is the best guard against injury.

(B) The facilities should have rules and regulations posted to inform the invitee as to what is permissible conduct. The children should not be allowed to wander over the premises unless accompanied by parents.

(C) Signs giving speed limits and other warnings to motorists should be posted on roads in the area.

Proprietors of picnic grounds, camping sites, and other family type facilities should realize that they may be liable if children are injured on their premises. It is inconceivable that a possessor could maintain a business that is completely free from hazards of personal injury to children. This fact suggests that the facility should be insured against these risks.

(4) Exclusion of unwanted guests: I mentioned earlier the exclusion of unwanted guests help the possessor of a recreational facility limit his liability. The possessor of the recreational facility may limit his liability by evicting an unruly guest. A "lookout" should be kept to discover any boisterous or unruly patron. If such conduct is known, or should have been known by the possessor, liability may be incurred if an unruly guest injures another invitee.

(5) Membership: Some operators may wish to consider limiting the use of their facilities to members only. Such a practice, if strictly controlled to exclude guests or new visitors, can reduce liabilities. If a member frequently uses the facilities and has become familiar with the hazards, there is less likelihood of a suit in the event of injury. In fact, his familiarity might reduce the chance of recovery for an injury or even completely void his right to recovery.

Operators adopting this practice have found that insurance policies are considerably less than when the facilities are open to public use. From a management viewpoint, the operator is relieved of many problems encountered in dealing with the public and less time is required for administration.

(6) Incorporation: A corporation is an artificial person which is created under and operates according to state corporation laws. The assets of a corporation are owned by it. The ownership interests of the individuals involved are represented by shares and do not extend to the assets of the operation. The corporation owns the property. The liability of this type of business concern usually is limited to the value of its assets.

If a landowner incorporates his recreation enterprise, he must not act as a sole proprietor, for he may incur personal liability even though he is incorporated. In the operation of a corporate business, it must be made clear to persons dealing with the recreation enterprise that they are dealing with the corporation and not with a stockholder as an individual. Contracts should be made in the corporate name and not by a stockholder as an individual.

The corporation may prove to be an advantageous method of conducting a business, especially where the cost of insurance is high. Instead of paying a large fee for liability insurance, the operator may incorporate

his recreational enterprise, thereby limiting recovery for a liability claim to the extent of the value of the corporate assets. Since there are many problems involved in organizing and operating a corporation, and the benefits may be negligible, the advice of an attorney and a business analyst is desirable.

(7) Release: Some recreation operators believe they relieve themselves of this obligation to an invitee by obtaining releases from paying guests, or by displayed signs that imply that the invitee uses the facilities at his own risk and the operator will not be responsible for accidents. Operators should be aware that they cannot contract away their legal responsibility. While this practice may tend to discourage the filing of suits, it will not usually provide a defense to legal action.

The law frowns upon the attempt of anyone to limit or escape liability for his or her own negligence. At the same time, it must be conceded that a good release from liability is better than no release at all.

A release would be worthless, as a practical tool, if the procedure of obtaining one from an invitee or licensee was so complicated it caused unpleasantness. The answer is a form release which the invitee or licensee would gladly sign and yet which would protect the possessor against all but gross or wanton negligence.

In the Appendix C, a sample form of release is shown. It is doubtful that you would wish to go to the bother of obtaining a release in all situations, but if any occasion arises, it might be helpful.

(8) Insurance: Insurance can serve as a buffer against claims arising from injuries sustained through the use of outdoor recreation facilities. Insurance does not eliminate the risk, but shifts it to a professional risk bearer. If a guest is injured, the insurance company will pay the damages

according to the conditions in the policy or contract. The operator substitutes a known loss, (the premium) for the chance of a greater loss (the amount of damages that an injured guest might be awarded).

With some careful shopping, adequate liability insurance for most outdoor recreation enterprises can be obtained. Campground operators particularly have had little difficulty in obtaining insurance. However, some insurance companies have been reluctant to provide this type of insurance because recreation as a business is relatively new and unfamiliar.

Accident Procedure

If despite all the precautions that are taken to avoid an accident, an accident still occurs, there are still certain things that can be done in lessening the risk of litigation. First, adequate but proper first aid should be rendered. In case of doubt, call for a doctor or an ambulance. The threat of tetanus exists with any cut or laceration and insurance companies frequently pay claims for anti-tetanus shots simply as a precautionary measure. In case of any animal bite the danger of rabies must be recognized and the offending animal kept in custody for observation. It has been frequently asked after an accident whether steps should be taken to remedy the alleged dangerous condition, it being felt that any remedial measures are in fact an admission of guilt. Since lightning can strike twice in the same place, some companies have advised that the condition be remedied despite the hazard that it might be contended that this was an admission of guilt. Normally corrective measures taken after an accident are not evidence of negligence. If an accident occurs, the possibility of litigation should be kept in mind. Therefore, the names of witnesses should be obtained and photographs taken. Prompt notification

of your attorney or your insurance agent is of great assistance in preparing a proper defense.

Often if you have people working for you, an accident report form will be very helpful. Have your attorney and insurance agent review them as to content. Explain the purpose of these forms to your employees in detail.

Personnel should be reminded not to make damaging admissions at the scene of the accident, as such statements sometimes taken out of context can be very damaging at the time of the trial.

Importance of Insurance

Insurance companies warn that liability claims are becoming more prevalent, verdicts tend to favor the injured person, and settlements awarded by the courts are spiraling upward.

In seeking insurance, the operator should first consult his regular agent. Even hesitant insurance representatives will often agree to write the necessary insurance if the operator has obtained his personal and other insurance through the same company.

Some insurance companies have policies that cover outdoor recreation enterprises specifically; others attach a rider to a general farm liability policy. General farm liability policies do not cover liability where a fee is charged for entrance or for services on the insured's property.

Commercial recreation includes such a wide variety and numerous types of businesses, including farm and rural recreation. Because of this, insurance rates for specific types of recreation enterprises are not always comparable between companies. Considerable savings can often be made by shopping for the desired insurance through several agencies.

A word of caution, be certain that the insurance agent understands the nature of the operation and all of the activities and hazards. When a policy is written, you should be sure you thoroughly understand any limitations or exclusions of the policy. Sometimes operators have obtained insurance at low cost, but later discovered that certain hazards or facilities were not covered by the policy.

I must emphasize that insurance cannot eliminate the risk nor prevent loss, but it transfers the risk to a professional risk bearer, who is able to shoulder a potential economic loss. In essence, insurance substitutes a known loss for an unknown loss. Budgeting a recreational enterprise is important because the insurance premium is a fixed cost for which you can plan.

Liability insurance is indispensable if a recreation operator wishes to avoid the risk of staggering financial losses.

The shock of a large judgement may completely destroy the financial foundation of the recreation business. Even small damage claims can seriously affect the financial stability of the enterprise.

Although lawsuits have not frequently occurred in recreation enterprises, an operator cannot afford to assume the risk of liability without insurance protection. Even the most prudent and careful operator should not assume that he will not be sued. A court decides whether the case is justified. Even though the defendant may not be proved negligent and liable, he may be faced with high defense and legal fees. Liability insurance can provide protection against such legal costs. The insurance company can also represent the defendant in a law suit, so that it is possible that the defendant would not even have to appear in court.

The Insurance Policy

The standard liability insurance contract is usually an agreement to pay on behalf of the insured, up to the limits of the policy, all sums that the insurer is obligated to pay as a result of accidents resulting in bodily injury or property damage to others. This includes payment of expenses incurred by the insured for immediate medical treatment at the scene of the accident, whether or not the insured is negligent. In the event of a law-suit, the insurer agrees to pay all expenses of investigation, defense, and settlement of the accident even if the suit should be groundless or fraudulent.

The two types of insurance policies which are used for the protection of recreation enterprises are the owner's, landlord's and tenant's policy (OL&T) and the comprehensive general liability policy.

(1) The Owner's, Landlord's and Tenant's Policy (OL&T): The basic contract for covering legal liability to the general public is the owner's, landlord's, and tenant's (OL&T) policy. Under it, commercial enterprises such as archery ranges, boats for hire, skeet- and trap-shooting, ski lifts, and even farms, may be covered. The rates, which vary by enterprise and by State, are usually quoted per \$100 of receipts from the operation insured, subject to a specified minimum annual premium in dollars. There are a few exceptions, however; for example, saddle horses used for hire are covered at a flat rate per animal, subject to a minimum annual premium applicable to the policy.

For an additional premium, the recreation operator may obtain additional coverage for product liability or for structural alterations.

Operators of refreshment stands, snack bars, or stores should consider this liability for damages resulting from goods sold to guests. Products

liability coverage protects against accidents occurring away from the premises as a result of purchasing the product.

Structural alteration coverage may be needed to provide adequate coverage for recreation enterprises undergoing further development or improvement of facilities. Without adding this coverage, the OL&T policy will not cover liability for injuries relating to new construction or the demolition of existing structures.

(2) Comprehensive General Liability Policy: A policy designed to provide a business with protection for all exposures, including products of liability unless specifically excluded is the comprehensive general liability policy. Generally, policy is regarded as providing more complete protection than the OL&T policy because there is less chance that an unknown hazard will not be covered.

The comprehensive policy has the major advantage in that it automatically covers any hazards, such as facilities added during the year, without notifying the insurance company. A survey of all existing hazards is made by the insurance company at the beginning of the insurance contract. At this time an estimated premium is determined, frequently on the basis of estimated income. When ending the policy period, an audit is made which reveals the addition of any other source of liability that was not present at the beginning of the contract. At this time the insured will be required to pay an additional premium for facilities that were added during the policy term.

Insurance Costs: Simply stated, insurance premiums are rated according to the policy coverage. A policy with 5/10/5 coverage will not cost as much as one with 100/300/5. (5/10/5 means that the coverage limits are \$5,000 for bodily injury to one person, \$10,000 per accident for injuries to two or more persons, and \$5,000 for property damage.) However, the cost

difference is not in direct proportion to the amount of coverage and may be only slight for some types of coverage. The amount of coverage available depends on personal preference and what the operator can afford. A survey of recreational enterprises revealed that the majority of operators choose a coverage of \$25,000 or more per person and \$50,000 or more per accident.

Because of the many possible combinations of activities involved and the extent and nature of these activities, the consensus of insurance rating organizations is that a "rating" has to be made in each case, based on the "exposure" or risk involved. This means that a landowner should contact his property-insurance agent, who can furnish (or have his home office furnish) more definite information as to the premium.

Just as a rough example, if fees were charged for hunting or fishing, the premium for liability coverage at 5/10/5 might amount to from 50 cents to 65 cents per \$100 of receipts. As a floor on the premium, the company might set a minimum of about \$35, so that the landowner would have to pay at least that much, regardless of his receipts from the hunting or fishing operation. He could obtain higher coverage limits for a slight increase in his premium rate per \$100 of receipts.

The rates per \$100 vary by state as well as by activity involved. Some of the possible activities, such as operating a vacation farm, or providing facilities for camping (family basis), picnicking, and hiking, have not been classified, and rates for them would have to be determined from the individual situations. Even where activities have been classified, an individual rating provides the necessary flexibility whereby more consideration can be given to the circumstances involved. And where two or more activities are involved, particularly when one is more risky than the others but one

admission fee applies to all, an individual rating becomes even more necessary in order for the company to determine an appropriate premium rate and minimum premium.

Available information on a few income-producing recreational projects in the Midwest that have been individually rated, together with the annual premiums paid for liability insurance, is given as follows:

RECREATION PREMIUM RATES - EXAMPLES

\$5000/\$10,000/\$5000 Coverage

Recreation Enterprise	Reporting Numbers	Basis for Rating	Premium Range (1963 prices)
Vacation farms..no horseback riding	8	Per year	\$35-75
Vacation farms..with horseback riding	2	Per year	180-200
Lake resort			
Boat dock	4	Per year	10-20
Snack bar	4	Per year	40-50
Cabins	4	Per cabin	3-10
Boats - row	3	Per boat	\$.75-1.50
Boats - motor	3	Per boat	\$1.75-2.50
Swimming	3	Per year	25-150
Access to fishing	3	Per year	40-45
Fishing guide	4	Per year	25-40
Hunting preserve	4	Per year	40-75
Duck & Goose Blinds	4	Per year	40
Fee fishing ponds		Per year	50-75
Deer Hunting	4	Per year	40-75
Vacation farm	4	Per year	40-75
Campgrounds	2	Per year	26-40
	3	Per space	\$3.85-5

<u>Recreation Enterprise</u>	<u>Reporting Numbers</u>	<u>Basis for Rating</u>	<u>Premium Range</u> (1963 prices)
Picnic grounds	2	Per year	40
	2	Per space	\$3.85-4
Pony ride	2	Per year	60-65
	2	Per horse	27.50
Riding academy	2	Per year	115-135
	2	Per horse	27.50
Riding stable	3	Per horse	27.50
	3	Per year	125-200
Combination project (camping, cabins, trailer spaces, boat rentals and retail sales)	1	Per year	110

Special Recreation Problems

Each type of recreation enterprise has unique characteristics which create different problems of liability. The major enterprises as treated here are from the publication "Liability Risks in Operating A Farm Recreational Enterprise" by James F. Crews and Ronald Bird.

Deer Hunting: It is common practice in some areas to charge for permission to come upon the land to hunt deer. Hunters who pay the fee become invitees. The owner of the land has a duty to keep them safe from dangerous conditions that may cause physical injury. Every hunter coming upon the land for a fee should be warned of abandoned wells, dangerous animals, unsafe structures such as cabins and old outbuildings in the area. If injury results from a condition that has been explained to the hunter, no liability will be imposed. The use of signs to point out specific dangers is a good practice. A map of the premises with the dangerous areas "set out," may also be effective in limiting liability.

Some farmers have been issuing permits to hunt upon their land which state "not responsible for accidents incurred while on the premises." These phrases are of no legal effect. Such a disclaimer does not relieve the farmer of liability. For example, if a hunter is injured by a dangerous animal or any other dangerous condition of which the hunter had no knowledge, the farmer may be held liable.

A farmer may be held liable for injuries caused by one deer hunter to another under certain conditions. Allowing drunken patrons to come upon the premises with dangerous weapons may impose liability upon the owner. A farmer may also be held liable for permitting too many hunters on his land at the same time. The proprietor of a deer hunting enterprise should caution his patrons as to the number of hunters already on the premises.

The legal risks are such that insurance may or may not be required. If the above precautions are taken, liability should be reduced greatly.

When a farm is leased to a group of deer hunters, the liability for injury is greatly reduced. The hunters should be warned of concealed dangers. This is especially true where there is a dwelling on the land and a promise to repair is included in the lease. Liability may be imposed for injuries caused by disrepair of the premises. It is suggested that a promise to repair a building should not be included in the terms of such a lease. An attorney should be consulted where such a lease is to be used.

If rooms are rented to hunters, liability may arise for injuries to the hunters while on the premises. Most general farm liability policies do not insure against this risk. Before carrying on this type of enterprise, the provisions of insurance policies should be checked. Liability may be imposed for unsafe food served to hunters who pay for their meals. While

the probability of such injury seems small, it may be wise to examine existing insurance policies covering the farm and the home.

Riding Stables: The rule in the ordinary contract of bailment is when a person lets a horse for hire, he is under an obligation to furnish a reasonably safe animal for the purposes known to be intended. For failure to use due care to discover dangerous propensities in such animals, or to disclose them to the hirer, he may be held liable for damages. Also, the proprietor will be held liable if lack of ordinary care or negligence results in the selection of an animal which is not suitable for the intended use. However, the proprietor may be liable for injuries caused by a horse even though he does not have actual knowledge of the wild and dangerous character of the horse.

The duty to protect the patron from injury is the same as in other bailments. If the horse is unfit for children, under no circumstances should the animal be hired to a child. If the horse is high-spirited, a statement as to the temperament to an experienced rider should be enough to save the proprietor from liability for subsequent injuries.

The disposition of the horse is only one phase of liability. If the riding equipment furnished to the patron is in an unsafe condition, resulting injuries may create liability. In order to limit liability, all saddles and other riding paraphernalia should be thoroughly examined before each hiring. The measuring stick for imposing liability would seem to be, "Is this particular horse and equipment safe for this particular rider?"

When the horse or pony is under the sole control and management of the proprietor, another method may be used to impose liability. The duty owed the patron is the same but the proprietor must show absence of negligence if injury occurs. Proof of negligence is easier to establish in this

situation than in one in which the patron is in sole control of the horse. For example, if a patron is thrown from a horse which is being led, liability may be readily established; whereas if the patron is riding a horse of which he is in sole control, proving negligence is more difficult.

Methods of limiting liability include careful selection of animals used in the enterprise, and regular examination and repair of all equipment. Animals which show dangerous propensities, such as to run away, to kick, or other non-gentle characteristics, should not be used in a riding stable enterprise. If a horse is high-spirited, there would seem to be no valid reason for excluding its use from the business. However, a high-spirited horse should not be hired to a "low-spirited" customer without full disclosure of its character.

If a horse is hired to an individual, the proprietor should explain that no other person is to ride it. Possible liability may arise if the animal is turned over to a wife, child, or other person.

The equipment used in the riding stable enterprise should be frequently and systematically inspected. All defects should be repaired. If a reasonable inspection would not disclose a defect in the equipment furnished, then a bailor will not be held liable for injuries caused by equipment breakdown.

Personal injuries occur more frequently in enterprises that use riding horses than in other tourist enterprises. Insurance can be used to cover the risk, but the premiums are high. Incorporation may be a better method of limiting liability. Prior to making a decision, an attorney should be consulted.

Fishing Ponds: Where permission to enter upon the premises is given for a fee, the relationship of invitee applies. A problem that is unique to this enterprise is liability imposed for accidents due to dangerous conditions of docks and boardwalks. Repair and inspection of these

facilities should be frequent and thorough.

Special problems arise when the proprietor merely posts a container and the invitee puts a fee into it. Lack of supervision permits unruly patrons to enter and they may injure other patrons. In this situation, liability may be more readily imposed. Insurance should be carried.

Because of the nature of the risk, it is best to insure or incorporate fishing ponds.

Swimming Pools: Where swimming for a fee is allowed, special precautions should be taken to prevent injury. Adequate signs noting the depth of the water, and divided areas for experienced swimmers and novices should be erected. If diving is permitted on the premises, the area should be marked and other persons excluded from the area. A competent lifeguard should be stationed at intensively used swimming facilities. He should be provided with safety equipment. The lifeguard has a duty to remain alert.

In some tourist enterprises using lakes and streams for swimming areas, there are special problems in alerting patrons to dangerous conditions. Water levels vary and current flows are difficult to define. Therefore, signs and depths markings must be frequently changed. If children frequently use the facility, a lifeguard should be employed. When unnatural and dangerous conditions arise, swimming should be prohibited. These precautions may prevent injury and limit liability.

All swimming areas should be insured.

Hunting Preserves: The liabilities involved in operating a hunting preserve are the same as those in allowing a person to hunt deer for a fee. Since the operation of the enterprise is continuous, and the concentration of use is higher than the ordinary deer hunting enterprise, more precautions to guard against liability from personal injury should be taken.

Permanent operation of a hunting preserve will depend upon the satisfactions enjoyed by the patrons and the safety precautions taken by the

management. Rules and regulations should be posted and all hazardous places clearly marked. Gun racks, special facilities for dogs, and other improvements on the shooting premises are necessary. Dangerous conditions upon the premises should be corrected. Paths should be inspected for holes, and regularly maintained. Automobiles should be excluded from the hunting area.

One regulation that might be advisable to enforce is prohibition of the use of alcoholic beverages while hunting. All unruly invitees should be excluded. The primary cause of injury on hunting preserves is negligent handling of firearms.

Boating: The use of boats in the tourist enterprise creates some special problems. Liability is imposed for injuries caused by faulty conditions of boats and for injuries caused by incompetents who are supplied a boat. All persons who rent boats should have them insured. The Federal Motor Boat Acts apply to the use of boats on navigable waters. These Acts require assistance to certain persons, and other rules of conduct and equipment standards are spelled out. The boat operator must abide by these rules and is subject to liability under the conditions stated in these Acts. Also, Admiralty Laws apply to navigable waters and further define the operator's liability. Since liability may be imposed for a variety of reasons, all boats used on navigable waters should be insured, whether rented or not.

Alex L. Parks in his book, "Protecting You and Your Boat", states that some of the more common situations in which boat owners have been liable are:

"A passenger slipping on an oil spot on the deck and breaking an arm or leg; explosions of various types due to gas fumes; navigating the boat carelessly or negligently so that the passengers are thrown violently against the side of the boat; collisions with other boats due to the

failure to have proper navigation lights; failure to have sufficient life jackets or buoyant cushions aboard if the boat sinks; failure to have sufficient familiarity with the boat to operate it in a careful, safe and prudent manner; negligently colliding with another boat due to failure to understand and observe the rules of the road; a passenger slipping or falling while getting into and out of the boat on a dock due to rickety and unsafe ladders."

Park further states:

"The principles of negligence in boating are quite similar to the principles of negligence governing the conduct of other every day activities. In some respects, the end result of the negligence in the terms of money liability may be different but the fundamental principles remain the same."

"The rules of law which govern the relationship of individuals with respect to wrongs committed against others or their property are collectively referred to as the 'law of torts'. One of the fundamental rules which is applicable to every day conduct is the legal duty of every individual to so conduct himself as to not injure another. The law of torts applies with equal force to a boat owner's obligation with respect to his boat. He has a duty, in varying degrees, towards practically all individuals who can be expected to be in the vicinity of his boat. The degree of duty is almost wholly dependent upon circumstances involved. Take a very extreme case, let us suppose that the boat owner suspects someone is tampering with his boat. He rigs a so-called "spring gun" in the deck set to go off if anyone steps aboard. It is beyond question that if a guest is accidentally injured by the spring gun, the owner will be held liable. A passerby whose hat blows onto the boat and who is shot when he steps on board to retrieve it could certainly recover. In fact, in this civilized age, it is possible

that a trespasser could bring suit against him and might even recover if he can show that his trespass was without any intention to injure the boat or appropriate the property of the boat owner."

"The first and most obvious precaution to be taken by every boat owner is a painstaking, thorough and periodic inspection of his boat to insure that it is not only equipped with the safety appliances required by the Coast Guard, but that every possible step has been taken to prevent and avoid the little hazards that may occur. The old adage that it is better to be safe than sorry can find no better illustration than in the sport of pleasure boating.

"Of equal importance is a thorough knowledge and appreciation of the rules of good boatmanship which include absolute familiarity with the rules of the road, the operating characteristics of your boat, and the common rules of safety which amount in the last analysis to the exercise of a little common sense."

"At this point, we all recognize that none of us can be absolutely infallible at all times. The element of human error cannot be eliminated. It must be assumed that even the best boat owner - as well as the best automobile driver - will some day be guilty of negligence and that such negligence may cause injury to some property or person. The answer is, of course, full insurance coverage, coupled, if possible, with a diplomatic warning and explanation to your prospective passengers as well as securing a release of liability from such passengers in appropriate instances."

Summary

When operating an outdoor recreation enterprise, an individual must exercise reasonable care for all persons entering or using his property

or services. Legally he owes the greatest degree of care to the patron who has paid a fee for the use of his facilities or services. For this patron, legally classified as an invitee, you must exercise reasonable care to prevent injury and to maintain your premises in a safe condition for his use.

Negligence in exercising reasonable care could result in an injury to an invitee. This in turn could mean a law suit or damage claims that might be enough to take all the profit from the enterprise not to mention your life savings, your home and property. Liability insurance should be obtained by all operators, regardless of the volume of business expected, for protection against shock losses and all costs connected with an accident claim. The policy with a minimum of \$25,000-\$50,000 bodily injury coverage is recommended, although greater coverage is preferable.

The Comprehensive General Liability insurance policy and the Owner's, Landlord's and Tenant's policy provide liability protection for recreation enterprises. Be sure that your insurance agent understands the nature of your operation and that all hazards are covered.

The availability and cost of insurance will depend upon the type of enterprise and individual circumstances. Liability insurance is available from numerous insurance companies. Rates vary among insurance companies; considerable savings can be realized by comparing insurance rates and policies offered by several agents and companies. You may then chose the insurance policy which provides the best coverage at least cost.

Remember to consider all factors that will affect the success of your enterprise. Liability insurance is a fixed cost that should be considered in any feasibility study. You should obtain estimates of insurance costs before developing a recreation area, or service, or before adding any facilities so as to avoid excessive insurance costs for the type of activity

planned. Consult a lawyer about liabilities that may be incurred through operation of an enterprise or addition of new facilities and services.

Liability risk and insurance cost can be reduced by avoiding certain activities associated with high risk and/or high insurance cost. You should carefully consider the increased insurance cost and risk of injury created by the addition of high risk activities.

The potential liability of an enterprise may be reduced by specifically limiting the area intended for use by the paying guests. Boundaries of recreation areas should be well marked and guests should be warned that they are to stay within these boundaries.

Your property, real or personal, must be maintained in a reasonably safe condition. The addition of safety precautions and elimination of hazards can reduce liabilities and the chance of an accident. Not only are insurance companies more willing to insure an enterprise which has certain built-in safety precautions, but some companies may grant a premium discount after a period of demonstrated safe operation.

Liability can be reduced if reasonable care is exercised to warn visitors of any existing manmade or natural hazards or unsafe conditions. Rules and regulations pertaining to the use of a recreation area should be posted to inform the invitee of the conduct expected of him.

Be sure you understand and comply with all laws and regulations applicable to the operation of your enterprise.

You may wish to consider limiting the use of your facilities to members only. If a membership organization is properly administered, legal liability and premium rates may be reduced considerably. This type of an arrangement has an additional advantage in reducing administrative and maintenance costs.

This is but one of the publications and services provided in the PROFIT program of your Cooperative Extension Service at Oregon State University.

We hope this publication is of assistance to you. For educational information and further assistance we encourage you to contact your county agent.

APPENDIX

Release

Date _____

To Whom It May Concern:

In _____ as a visitor upon the real
NAME (Invitee)
property owned by _____ and recognizing the
NAME (Owners)
degree of liability to guests the owners have been subjected, hereby release
the owner and his property from any and all liability to me or my heirs,
executors, administrators, or assigns, for any loss, claims, injuries
to person or property, or damages whatsoever arising out of or connected
with my participation and use of the real property.

I further agree to assume such risk as may be involved.

Signature

GLOSSARY

Terms used in an insurance contract are generally defined in the contract, and the definition may possibly vary from those given in this publication. In general, however, the legal and insurance terms that you should know are as follows:

Terms and Concepts

Accident. Accident, in a strict legal sense, is an occurrence for which no one would be liable. For instance, if a rattlesnake bites someone hunting or fishing on your property, you are not to blame.

Act of God. Any occurrence which takes place without the intervention or aid of man.

Agent. One who acts for another. For example, your insurance agent acts for you in insurance matters.

Assumption of Liability. An insurance company issuing a liability policy, thereby agrees to assume, up to the amount of the policy, liability arising from acts of the kind specified in the policy. For instance, if you have purchased a \$50,000 general personal liability policy, the insurance company would assume and agree to pay (up to the first \$50,000) your liability arising from any unintentional act or failure to act on your part.

Attractive nuisance. Attractive nuisance refers to a dangerous object or condition expected naturally and continuously to lure children onto premises where the object or condition exists and which is likely to cause injury. An abandoned barn that may collapse at any time could be considered an attractive nuisance.

Bailee. One who receives possession of personal property from another for a specific purpose with the understanding it will be returned when the purpose has been accomplished.

Bailment. A contract by which one person transfers possession of his personal property to another, to be held for a certain purpose and to be returned when the purpose has been accomplished.

Bailor. One who transfers possession of his personal property to another to be held for a certain purpose and to be returned when that purpose has been accomplished.

Breach of Duty. The failure to conform to a behavior or standard of a reasonable man when a duty exists between two parties.

Causal Connection. When an act of omission or commission was a contributing factor in bringing about damage to the plaintiff.

Common law. The body of law based on custom and precedent.

Comprehensive General Liability. These policies are "tailor made" to fit conditions in the policy holder's business which are likely to give rise to liability. Rates are based upon expected revenue and the probable risk the company is expected to assume.

Corporation. A group of people who get a charter granting them as a body certain legal powers, rights, privileges, and liabilities of individuals, distinct from those of the individuals making up the group.

Duty. An obligation of the individual to use reasonable care to prevent exposing another to unreasonable risks of injury when the relationship between the two parties is of a nature to warrant such duty.

Entrepreneur. It is used here to mean a person who operates an outdoor recreation business for a profit.

Farmers Comprehensive Personal Liability. This term refers to a type of insurance policy widely used by farmers and ranchers for protection of their regular operations. This kind of policy may not provide adequate protection if the farm or ranch is opened to paying recreationists. Some insurance companies might consider liability arising from a recreation enterprise to be covered by provisions of the policy and others may not.

Insurance Coverage. This is the protection provided to the purchaser by a liability insurance policy. The policy spells out the type of injury and liability and the financial limit of the insurance company's liability - \$10,000, \$50,000, etc.

Insurance Rates. This means the premium (cost) paid by you for the policy providing insurance coverage.

Invitee. This is a person who is invited onto property for the benefit of the landowner. A person who pays a fee for the right to hunt on the landlord's property is a business invitee.

Law of Torts. Rules of law which govern the relationship of individuals with respect to wrongs committed against others or their property. A "Tort" is a civil wrong, inflicted otherwise than by a breach of contract.

Lease. A contract granting the use of real property for a definite period, in consideration of payment of rent.

Lessening Liability. The term lessening liability refers to the reduction of potential liability to the customer by keeping your property in a reasonably safe condition at all times.

Liability. The term liability means an obligation arising through the operation of the law which requires a monetary compensation to a person for his injury or loss of property.

Licensee. A licensee is a person who, with the landowner's permission, enters property for his own purposes and not for the purpose of conferring any benefit upon the landowner. A person who requests and receives the permission of the landowner to hunt on his property without paying a fee is a licensee.

Negligence. This indicates an act which a reasonably prudent person would not have done, or a failure to do something which a reasonably prudent person would have done in similar circumstances. For instance, you are negligent when someone hunting or fishing on your property steps into an animal trap, if you had set the trap and failed to warn the person of its presence.

Owner's, Landlord's, and Tenant's Policy. The coverage provided by this policy is designated specifically for someone opening a business to serve the public. It may or may not be suitable for certain recreation enterprises.

Plaintiff. A person who brings a suit into a court of law.

Possessor. A possessor of real property is usually an owner or renter in possession of land or real property.

PROFIT. An acronym that stands for "Planning Recreation Opportunities For Income and Tourism." This publication is one part of this program which is sponsored by the Cooperative Extension Service, Oregon State University, Corvallis.

Recreationist. A recreationist (as used here) is a person paying for the use of a recreation facility or facilities, or a particular recreation service such as guiding.

Release. The surrender of a claim or of a right of action to the person against whom the claim or right exists; an instrument evidencing such surrender.

Trespasser. The term trespasser refers to a person who enters the land or property of another without his permission.

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Massey, Higginbotham □ Vise, P.A.
ATTORNEYS AND COUNSELORS AT LAW

G. MICHAEL MASSEY

3003 LAKELAND COVE, SUITE, JACKSON, MS 39232

P.O. BOX 13664, JACKSON, MS 39236

(601) 420-2200 FAX (601) 420-2202

Email: mmassy@mhvlaw.com

G. MICHAEL MASSEY

ROBERT T. HIGGINBOTHAM, JR.

J. WILBOURN VISE

KEVIN W. BRADY □

POST OFFICE BOX 13664

JACKSON, MISSISSIPPI 39236

□ALSO LICENSED IN ALABAMA

**HUNTING CLUBS AND LAND OWNERS:
LIABILITY ISSUES AND HUNTING LEASES**

Prepared By:

G. Michael Massey

J. Wilbourn Vise

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I. LIABILITY ISSUES FOR LAND OWNERS AND HUNTING CLUBS: WHAT YOU CAN DO TO PROTECT YOURSELF

A. Introduction

Land owners, have you ever considered what would happen if you allow a group of hunters or a hunting club to use your land and there was an accident? What about hunting club members? Have you ever considered what would happen if a guest fell from a poorly constructed deer stand or a member accidentally shot another? Of course we all hope that these things never happen, but unfortunately they do. So what steps can we take to prevent them from happening, and to minimize the negatives both legally and practically? These materials will take a broad look at some of the liability issues concerning the lease and use of land for recreational purposes for both hunting clubs and land owners as well as measures that can be taken to reduce legal liability for both.

B. Land Owner Issues

Land owners face potential liability when they allow others to use their land for hunting, fishing, hiking, camping, etc. However, the state of Mississippi along with many other states have passed recreational land owner liability statutes that limit the liability of land owners in certain situations.

Pursuant to Section 89-2-23 of the Mississippi Code, landowners who open their land to the public without charging a fee do *not* have a duty of care to keep their land safe for entry or use by others for hunting, fishing, etc. *and* shall *not* be required to give any warning of dangerous conditions to the same. This law also applies to person(s) to whom the land owner gives permission to use the land. Miss Code Ann. §89-2-25. This protection applies in all situations *except* where a land owner willfully or maliciously fails to guard or warn of a dangerous condition; if the land owner was paid any compensations for use of his land other than by the federal, state, or local government; or in a situation where a third party to whom the landowner owed a duty to keep the land safe is injured by acts of person(s) given permission to hunt, fish, etc.

These statutes are applicable to land owners who allow others to use their premises for hunting, fishing, hiking, camping, etc. so long as the person is not willfully, deliberately, or

maliciously injured *or* no fee is charged by the land owner for use of his land, or if notice that the land is open to the public is not published at least once annually in a newspaper in the county where the land is located. Basically, this law will not apply to land owners who have leased their land to a hunting club or others and charge a fee for using his/her land for recreation activities. If landowners do not meet the requirements set forth in these statutes, then they will be subject to potential liability as established by the courts.

Once land owners accept any payment from a club or individual for the use of lease of land they are no longer protected by the limited liability statutes outlined above the and become subject to common law levels of liability established by the Courts. There are three (3) status levels recognized in Mississippi and in the majority of states when on the land of another: (1) trespassers, (2) licensees, and (3) invitees. The duty of care a land owner owes to each is determined by how the court classifies the person.

1. Trespassers.

A trespasser is a person who enters another's land without license, invitation, or other right. The duty of care owed to a trespasser is that the land owner may not willfully or wantonly injure the trespasser. Practically, this means that you as the land owner cannot set up booby traps such as spring guns, bear traps or otherwise to injure someone who enters your land without permission. A better option is to post your land and call the proper authorities if you notice people trespassing on your land.

2. Licensees.

A licensee is a person who enters the property of another for his own convenience or pleasure pursuant to the license or implied permission of the owner. The duty of care owed to a licensee is the same as that of a trespasser, to refrain from willfully or wantonly injuring them. The Mississippi Supreme Court has made a simple negligence exception to the duty of care owed to licensees that applies to land owners whose (1) active negligence subjects a licensee to unusual danger (2) when the presence of the licensee is known. This exception does not apply in the case of a licensee who is injured as a result of a condition on the land through passive negligence. This rule of liability is based on the theory that a licensee receives permission to be on the land as a gift, because there is no benefit given by the licensee and the licensee must take the land as he finds it. To be cautious, however the land owner should still warn of or repair known dangerous conditions.

3. Invitees

The final status level is that of an invitee. An invitee is a person who enters the land of another in response to an express or implied invitation of the owner for the mutual benefit of the parties. The duty of care a land owner owes to an invitee is to keep the premises reasonably safe and where unsafe conditions exist, to warn of any known danger not in plain and open view. If the land owner receives any compensation from the hunters or the hunting club, then the land owner will owe the hunter or hunting club a duty to keep the premises reasonably safe and to warn of known hidden dangers.

C. Hunting Club Liability Issues.

Hunting clubs, just like land owners, have their levels of liability and duties determined by the status of the person that is injured; trespasser, licensee, or invitee. For the most part, the majority of hunting club guests fall into categories of either licensees or invitees. What are some typical causes of accidents in hunting clubs? Poor maintenance, the cabin or shanty with the broken steps or rails. The three or four people skinning a deer, each with a sharp knife, and multiple fingers within cutting range. The old homemade bridges you have to cross to get to your favorite stand, that old wooden tree stand with the creaking boards and missing ladder rungs. It only takes a little time to repair these items or exercise a little caution versus being held liable for accidents caused by ill-repair. Other causes of accidents include the mixture of alcohol and guns, the absence or non-enforcement of club rules, and/or failure to abide by the safety laws set out by the state.

What happens in the event that one of your members or guests get hurt on the club's premises, or worse yet, shot during a hunt? Is it not foreseeable that the injured person or his family might ask the club to pay the medical bills, along with compensation for his pain and suffering, especially if the accident or mishap is due to someone else's carelessness or negligence? What if your club is unincorporated and has no insurance? Who pays?

The only sure way to protect against legal liability is to prevent accidents from happening in the first place. It is impossible to overemphasize safety issues in hunting clubs. Safety should be made a top priority, if not *the* top priority in every hunting club. Unfortunately, safety is a topic which many hunters don't want to think about, much less discuss. Many hunters think they are extremely safe and cautious and that they will never be involved in an accident or mishap. But consider the following statistics: there were 71 hunting related accidents in Mississippi

between 1998 and 2000 as reported by the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) in a two year study.¹ Of the 71 incidents, 35 involved accidental shootings of another person while 11 were self-inflicted. The remaining 25 accidents involved the use of tree stands with 8 occurring in 1998-99 and 17 in 1999-00. The MDWFP began tracking tree stand accidents several years ago. In the first reporting year, 19 accidents were reported with causes ranging from poorly secured stands, to steps coming loose, to carelessness like slipping on the steps or falling asleep. From July, 1999 through June, 2000, the MDWFP investigated approximately 23 separate shooting accidents, 8 of which were fatal. That compares to 23 accidents with 4 fatalities from July, 1998 through June, 1999. There were also several fatalities attributed to tree stand accidents over the past year.

With the time for pre-season club meetings and clean-up days upon us, many hunting club members will be more concerned with finding out where the deer are concentrated, where the food plots will be placed and the best place for their tree stands. Please also take time to discuss all rules and go over basic hunting safety. Safety issues should be put on the agendas of our hunting clubs as a top priority.

D. A sampling of lawsuits concerning hunting clubs.

Discussed below are several cases which illustrate the types of issues which have given rise to lawsuits concerning hunting clubs, not just in Mississippi but in other states as well. Ask yourself if things like this could happen at your club?

1. Hall v Booth, 423 So. 2d 184 (Ala. 1982). At issue was the liability of an unincorporated club for the death of a 13 year old boy shot during a deer hunt. The family of the boy sued all the members of the club claiming they failed in their duty to conduct a safe hunt. Two organized hunts were conducted that day, with some members acting as drivers and others as standers on one of the roads in the woods. During the second hunt, one member sent several hunters down a road with instructions to act as drivers. The drivers testified that they were told nobody else would be on the road. When the signal was given to begin the drive, one of the drivers heard a noise, turned and saw movement. He fired twice at what he thought was a deer. Unfortunately, he killed the 13 year old boy. In this case, the court dismissed the claims against all of the members except the shooter, holding that the

¹ It should be noted that the report covers accidents during all hunting seasons, not just deer season and includes figures for both shootings and treestand accidents. A breakdown of the accidents by type of hunting is as follows: Deer-46, Turkey-2, Rabbit-8, Squirrel-4, Duck/Geese-2.

proximate cause was not in the planning of the hunt. □When a hunter fires without identifying his target and shoots another person, that irresponsible act is the proximate cause of injury regardless of some negligence on the part of the victim.□To impose liability for negligence, the □injury must be a natural or probable consequence of the negligent act or omission which an ordinarily prudent person ought reasonably to foresee would result in injury.□Without getting too deeply into the facts, it appears the club members were very lucky to escape liability. What if the organizer of the hunt had said, □Boys, we□ve got to put some meat in the freezer and I don□ care what you shoot.□What if the shooter had been drinking all afternoon yet they let they let him participate in the hunt? Maybe the court would not have been as lenient with the club members.

2. Orsner v. George, 252 Cal. App. 2d 660 (Cal. 1967). Decedent was shot by one of two men who were target practicing during a weekend cleanup visit. The men were shooting pistols at □frogs and mudhens□over a pond which adjoined the clubhouse and accidentally shot a man who was out of sight across the pond working on some farm equipment. Five men were staying at the clubhouse that weekend and all had engaged in some form of target practice at one time or another. All the members of the unincorporated club were sued, some of whom were not even present at the time of the shooting. The court carefully examined the level of participation and encouragement provided by all the defendants. Ultimately, The court found that the non-shooting members encouraged the shooters or participated in the shooting. Fortunately for those not present, the shooting was held not to be a part of the purposes of the club and the shooters were not □acting within the course and scope of their activities as club members.□It was also held that two members who were sued but were not present at the time of the shooting could not have failed to exercise reasonable care □to control□the shooters since they did not even know about the shooting.. However, another member (who was present), was not dismissed since there was triable issue of fact as to whether he failed to exercise reasonable care to control the activities of the shooters. The lesson seems clear that all club members should take an active role in stopping activities which are dangerous, careless or in violation of a club□s rules. Not permitting target practice next to the clubhouse is a very common rule. If you see a member sighting his rifle close to your clubhouse after missing a deer during the morning hunt will you put a stop to it? Many club members don□ want to be perceived as trouble-makers or hard to get along with. But it is important that all club members take an active role in the enforcing rules and safety guidelines. As this case demonstrates, you could be found to be a participant in a negligent activity by going along with the activity or encouraging it.
3. Ermert v. Hartford Insurance Co., 559 So. 2d 467 (La. 1990). During a work day at an unincorporated duck club, one of the members saw a nutria swimming across a canal outside. He quickly began to load his shotgun but while walking through the clubhouse the gun accidentally discharged striking the plaintiff in the foot. The club had club rules years before, but the men had become good friends and were now in □general agreement□ on safety matters, adhering to common sense safety guidelines which all hunters should follow, such as no loaded guns in the camp. The plaintiff sued all the members of the club based on the premise that they were all liable for the actions of one of their members, for failing to adhere to any safety rules, and the fact that the shooter was acting

with the tacit approval of the other members. The Louisiana court held that one member is not liable for the actions of another simply because they are both members of an unincorporated association. Instead, members are personally liable only for tortious acts which they individually commit, participate in, authorize, assent to or approve. In this case, the various individuals were again fortunate to avoid liability for the actions of the careless member. This case underscores the need to have adequate rules, enforce them and not to get caught up in a careless activity.

4. Lumley v. The Ten Point Company, Inc., 556 So. 2d 1026 (Miss. 1989). The wife of a club caretaker was injured when she fell through stairway railing on the premises of an incorporated hunting club. The woman was leaning over a rail to hand something to her husband when the railing gave way, resulting in a fall onto a concrete surface. She suffered broken bones, multiple injuries and a 28-day stay in the hospital. Apparently, there was rotting wood around the nails holding the rail to the posts. This case is important in that it discusses the three types of status one can have upon the land of another, which in turn determines the duty owed by the landowner. One can be a trespasser, licensee or an invitee. An invitee goes upon the premises of another "in answer to the express or implied invitation of the owner or occupant for their mutual advantage." A licensee enters another's land "for his own convenience, pleasure or benefit, pursuant to the license or implied permission of the owner." Members of a hunting club would appear to fit into the category of either an invitee or licensee most often. Property owner owes a licensee a duty to refrain from willfully or wantonly injuring him. A greater duty is owed to a business invitee, that being "the duty to exercise reasonable care not to enter him." In this case, the caretaker's wife was an invitee, there for the benefit of the club. The key legal issue in determining Ten Point's liability was "whether Ten Point knew, or in the exercise of reasonable care, should have known, the defective condition of the rail and that it constituted a danger and hazard to persons using the stairway." Ten Point was able to convince the jury that the rotting was a hidden, latent defect that they could not have discovered in the exercise of reasonable care without dismantling the stairway. A property owner is only liable to an invitee for those hidden or latent defects which are known to the owner in the exercise of reasonable care. A lesson for hunting clubs is to exercise due care to make sure the premises are reasonably safe, to repair obvious and reasonably obvious problems, to place warning signs where you know dangerous conditions exist. Ask yourself what a reasonable person would do about a given situation and proceed accordingly. This does not mean hunting clubs must keep their premises in perfect condition, only reasonable condition. If a deer stand is about to fall out of a tree, fix it or tear it down before it falls with someone in it. If the bridge across the street is about to collapse, either put a warning sign in front of it or repair it.
5. Dumas v. Pike County, 642 F. Supp. 131 (S.D. Miss. 1986). Plaintiff had rented an inner-tube to float the Bogue Chitto Water Park with his friends. They eventually came to a clay embankment where swimmers obviously jumped or dived into the river on a regular basis. The land was privately owned. The plaintiff dove into the river from the embankment, struck his head on the river bottom and was rendered a quadriplegic. There were no warning signs. The land owner argued that the plaintiff was a trespasser, to whom he owed no duty except to refrain from willfully and wantonly injuring him. Court

pointed out, however, that the law is not so restrictive because the plaintiff's status could rise to that of a licensee. A licensee is a person privileged to enter onto the land of another by virtue of the consent or permission of the owner. Significant in this case, consent to enter land can be expressed by acts other than words. The condition of the land can be an indication of that consent. In this case, for instance, a land owner supposedly knew people used the land but had posted no warning signs. Also, there was a well worn foot path leading up the embankment and two earthen platforms for diving. If his status rose to that of a licensee, then the landowner would not have a duty to keep the land in a "safe" condition, but would have a duty to "disclose and concealed, dangerous conditions on the premises of which the possessor has knowledge, and to exercise reasonable care to see that the licensee is aware of the danger." Under the circumstances, the lower court decided to let the matter proceed to trial against the landowner.

6. Reed v. Employers Mutual Casualty Company, 741 So.2d 1285 (La. 1999)
Reed, a member of the hunting club, was injured when he fell from a movable tree stand that collapsed beneath him. Reed sued the treasurer of the hunting club who installed the stand and his insurance company for negligence in constructing the stand. The hunting club was unincorporated. The member who made the tree stand was found to be at fault for negligence.
7. LaBorde v. Scottsdale Insurance Company, 704 So.2d 247 (La. 1997). A non member guest of a hunting club member was shot and injured by a member of the hunting club who accompanied the guest and his friend. The hunting club was organized as a nonprofit corporation. The guest sued the hunting club to recover for his injuries. The guest and his friend were on their 4-wheeler on their way to pick up the second hunting club member. While approaching the stand to pick up the second member, the member fired his rifle at the 4-wheeler hitting the guest. The second member stated he aimed his gun and thought he was shooting at a hog. The jury found the second member 95% responsible and the hunting club 5% negligent. On appeal, the hunting club was absolved of any liability with the court finding that the hunting club could not have done anything to prevent the shooter from actually taking the shot.

E. Legal Devices to Minimize the Liability.

1. Incorporate

One way to minimize liability exposure is to incorporate your club. A properly organized corporation shields its shareholders or members from personal liability for club activities. If you are a land owner, you may consider creating a limited liability company or other legal entity and transferring the land you intend to lease to it. Incorporating protects the land owner from being directly liable for mishaps. Accordingly, while an injured person may have a cause of action against the club or the entity holding title to the land, he may be precluded from attaching the personal assets of the individual members or land owner. This is a very

important consideration for hunting clubs because many clubs are nothing more than unincorporated associations, groups of hunters who are pooling their money to pay for a hunting lease. Unincorporated associations do not shield their members from personal liability. If you as a land owner or club member decide to incorporate, records will need to be maintained, annual tax returns filed and minutes of meetings kept. Corporate formalities like proper elections of board members and officers should also be followed. The cost of incorporating may be less than you think, and the benefits of reducing liability may far outweigh the organizational costs. More sophisticated clubs may have detailed agreements dealing with transfers of stock, inheritance of stock by family members, buy-sell agreements, etc. Limited liability companies are becoming increasingly common as a choice of entity. Besides liability issues, tax considerations may also play a major role in the proper choice of entity, especially for clubs that own, rather than lease their land. You should always consider the tax implications before conveying land. Many large landowners such as International Paper and Georgia Pacific require hunting clubs to incorporate before they will enter into leases with them.

2. Insurance

Another method to limit financial exposure is to purchase a general liability insurance policy to protect the hunting club or land owner. While many land owners have homeowners' insurance policies already in place, the activities allowed by a lease agreement may not be covered by the general policy. The land owner may need to invest in a rider to the policy or require the hunting club to carry a general liability insurance policy with the land owner named as an additional insured. Regardless of whether the land owner requires the hunting club to carry liability insurance, it is still a good idea for a hunting club to purchase some sort of policy.

Many insurance companies offer policies that are both affordable and offer liability protection to hunting clubs. Additionally, by allocating the premium cost in the annual dues, the per member cost may make the insurance premiums affordable. You should take care to review the exclusions and make sure what types of mishaps are covered. For example, some policies only cover accidents which occur on the land, but not accidents in the physical structures such as the clubhouse or deer stand. Four wheeler accidents may also be excluded. You should be sure that you as an individual fully understand the extent of coverage under the club's policy. If you believe that more coverage is needed, you may consider purchasing an individual policy to protect your individual interest.

In Dartez v. Western World Ins. Co., 569 So. 2d 1089 (La. 1990) a club member was liked by an explosion when he attempted to light an old gas stove in his private camp. One of the knobs was missing on the stove and had apparently been left on releasing gas. Most of the club members had personal camps which they maintained on the club's leased land. An issue arose as to whether the accident was covered by the club's policy. No coverage existed for private camps. The club president claimed he had told the member to include their personal camps on their individual homeowners' policies. Other members, however, testified that they had always understood that their camps were covered by the hunting club policy. The insurance company also argued that it was liable only for the negligent actions of officers, directors and employees of the club, but not the individual members. The lesson is clear that hunting club members should make sure they understand what their club's policy covers. Don't wait until you need the coverage to learn about the policy's exclusions.

3. Waivers

Some land owners require hunting clubs to sign waivers or releases of liability before leasing land to them. Hunting clubs sometimes require their own members and guests to sign waivers of liability before allowing them to hunt. The waiver agreement must be based on offer and acceptance between two parties in equal bargaining position. The waiver must be based on some consideration. This consideration does not have to necessarily be money, the exchange of the right to hunt for agreeing not to sue may be enough. A waiver of rights should be carefully drafted to ensure its legality. Courts sometimes take a dim view of waivers when there is not adequate consideration flowing to the person who is giving up what may be an extremely valuable right. The hunting club should consult an attorney to be sure that their interests are protected.

F. Practical Ways to Minimize Liability.

1. Choose Good Leaders

The most obvious way to avoid liability is to prevent accidents. This starts from the top and flows downward. If the leaders set a tone of carelessness, lawlessness and foolishness, then the standard of conduct will likely be followed by most of the other members. That's also the example the children will pick up from the adults. Consider this the next time the time comes to elect officers. Be sure to pick someone who sets the right tone, commands the respect of the other hunters, hunts ethically and within the game laws, and will not be intimidated when the

time comes to enforce the rules, collect a fine, report a violator to the game warden, suspend or even expel a member. Of course, it is always easy to find someone willing to take on those responsibilities, but the point is that the tone will be set at the top, so choose your leaders carefully.

2. Make Rules not Suggestions.

Decide whether the club is going to have rules or suggestions. Many clubs claim to have rules. You'll find them posted on the bulletin board. Unfortunately, these rules will not do any good if no one will enforce them. Everyone, including the non-officers, should do their part to enforce the club rules. If a rule isn't worth enforcing then it may not be worth having. A good lawyer may use that fact to demonstrate that the club knew a certain type of conduct was unsafe yet everyone just looked the other way.

There is no universal set of rules that apply equally to all clubs. Different clubs have different problems and safety concerns that need to be addressed. Some of the more common rules would include: no drinking during hunting hours; no loaded weapons in the clubhouse or in vehicles; no target shooting on clubhouse premises; hunter orange required to be worn; children no allowed to carry a firearm before completing hunter education course; no shooting of illegal deer; all state and federal game laws to be followed. Other issues which bear consideration by your club may include the age at which children may be on a deer stand unaccompanied by an adult. This can be a tricky issue but bears consideration by your club. Also, does your club have an effective system in place to make sure where everyone is hunting? This can help prevent unexpected encounters in the woods. Many clubs do not allow members to get off their stands at certain times of the day. It may also be a good idea to schedule a short refresher safety course through the Hunter Safety division of the MDWFP. Some clubs require all of their members to take the hunter safety course, regardless of whether they are grandfathered in.

3. Make Safety the Primary Issue.

When your club holds its next cleanup day or organizational meeting, make sure that safety makes it onto the agenda. Discuss any potentially dangerous conditions on the premises which should be repaired. Evaluate your club's rules. Are they sufficient or are new ones needed? Are the club rules being enforced? Are the formalities of the corporation being kept up with if you are an incorporated club? Do you have liability insurance? What exclusions exist in your policy? Have you observed safety problems at your club in the past few years that concern

you? Are illegal deer routinely killed at your club? If so, it may demonstrate one of two things: (1) hunters are not positive about what they are shooting at, or (2) do not respect the game laws. The next time they guess at a target it may be your son waling out of the woods at dark. Don't wait until an accident happens at your club to take a hard look at what your club is doing from a safety standpoint. By making your club as safe as possible you'll have more peace of mind in the woods and possibly avoid a tragic accident. Many tragedies occur every year. Please help yourself, your friends and your children this season. There's not a deer out there big enough to justify losing your son or friend.

II. HUNTING LEASES

WHAT HUNTING CLUBS AND LAND OWNERS SHOULD KNOW

Suppose the person your hunting club has been leasing land from suddenly passes away and his family decides to rent the land to someone else. What can you do to prevent them from renting or selling to someone else? The answer depends on the terms of the lease agreement signed by both parties. In Mississippi as well as most states, leases are required to be in writing or they are not enforceable. So, if you have been renting land for the past few years without a lease agreement in place, then you do not have a binding agreement and could lose your land at a moment's notice. The purpose of this section is to inform both land owners and hunting club members of the basic items that should be considered in any lease agreement and the different types of lease agreements to consider when drafting next year's lease.

A. Types of Leases

There are many different types of leases that can be utilized dependant upon the situation and willingness of the parties. First of all, there are the general lease agreements where the owner typically leases his land for a term of years to one person or club. The land owner may choose to lease part of his land to one club and part to another. The land owner may also choose to allow a person to go on a certain number of hunts over a period of time. Finally, the land owner may decide to seasonally lease the land. For example, a deer club could lease the rights to the land during deer season while a turkey club could lease the same land for turkey hunting. It just depends on the needs of both the club and/or leases and the land owner.

B. Lease Terms

Regardless of the situation, there are key things that should be included in any lease agreement.

1. The lease needs to be in writing to be enforceable.

The agreement between the parties is what every court looks at to determine whether there was an agreement, if it was breached and the damages available to the parties. If there is no writing evidencing an agreement then a dispute may come down to one party's word against another. This is why Mississippi and many other states require lease agreements to be in writing. In Thompson v. Potlatch Corporation, 930 S.W.2d 355 (Ark. 1996), an officer of a hunting club sued a land owner to enforce a verbal contract to hunt on the land owner's land. The club officer claimed that the land owner orally agreed to allow the hunting club to lease the land for hunting

and trapping. The hunting club had sued the land for many years in the past. The land owner decided to begin formally leasing the land to hunting clubs, but required each club to be incorporated and carry liability insurance. The hunting club complied with these and other requirements but was not awarded a hunting lease. The hunting club sued the land owner for breach of contract. The court found that there was not a written lease agreement between the parties and the land owner did not have to lease its land to the hunting club. The lesson to be learned from this case is to be sure that any type of lease agreement is formalized in writing in order to protect both the rights of the hunting club and land owner.

2. Accurate Description of Land.

The lease should contain an accurate description of the land to be leased. This is to insure a complete understanding by both parties where the boundaries of the land actually are. Descriptions such as "the old Porter farm" may not be sufficient to describe the leased property. If the description is unclear, it may cause the hunting club to wind up trespassing on someone else's land and poaching deer that club members thought they had the right to take. You should also pay attention to the need for easements. You may need to pass through land you do not have the right to hunt upon. Make sure you can get to and from the leased property.

3. Clearly Identified Parties to the Agreement.

The parties to the lease should be clearly identified. A lease in the name of one of the club members is not the same as a lease in favor of the club. If you are incorporated, include the full name so that the lessor understands he dealing with a corporation. As a lessee be sure all of the persons leasing the land have executed the lease. Otherwise, you will not have a valid lease if the landowners don't want you there.

4. Price Clearly Set Out.

The amount of the lease should be set out in clear terms so as to avoid confusion of how much is owed and when payment is due. Be clear about when payment is due. Failure to make timely payments may give the lessor the right to terminate the lease.

5. Activities Allowed on the Leased Land.

The lease should set out what activity(s) the club is allowed to conduct on the land. This includes the type of game to be hunted, the amount allowed to be taken and other things such as the allowance of group hunts and the number of members and/or guests allowed on the land at any

given time. Be clear about what is expected by the hunting club in terms of maintenance, closing gates, etc.

6. Term of the Lease

The length of the lease should be set out in clear language. A land owner may be inclined toward a short term lease to allow the land owner to determine what kind of tenant the person or club is going to be. If the club is responsible and takes care of the land, then the land owner may decide to re-lease the land to the club. The club, on the other hand, may want a long-term lease before making a significant investment in game management and physical facilities.

7. Escape Provisions.

The lease should have provisions allowing both land owners and hunting clubs to terminate the lease upon the happening of certain events such as violating the state game laws, upkeep of the property, land owners failure to maintain the roads, etc. Consider what problem would necessitate termination of the lease. What if the land owner cuts all the trees? Would you still want a five (5) year lease of clear-cut property?

8. Ability to Sublease or Transfer.

The lease should set out whether the lease can be transferred or subleased. If the lease can be transferred or subleased, it should set out the terms under which a transfer or sublease will be acceptable to the land owner.

9. Renewal Options and Right of First Refusal.

The lease should state whether the lease can be renewed for additional terms. If so, the terms of the renewal should be clearly stated with provisions for rent increases and other options. A hunting club should try to negotiate the right to match any other offers for the lease of the land to prevent the guy down the street from offering a dollar an acre more to get your club property after the hunting has improved under your management. This is commonly called a "right of first refusal."

10. Rights of the Land Owner.

If the land owner desires to reserve any rights to hunt on the land, it should be set out in the lease agreement.

11. Liability Insurance and other Liability Shields.

If the owner requires that the hunting club carry a liability insurance policy, the terms and minimum amounts of coverage acceptable to the land owner should be set forth in the lease.

Additionally, the land owner may require the hunting club to name him as an additional insured under the liability policy. The land owner may require that the hunting club agree to indemnify him from any suits resulting from injuries suffered by any hunting club members or guests thereof on leased premises. The land owner may additionally require the hunting club to become incorporated before any lease is executed. It is important to note that Mississippi does not recognize the right of an unincorporated association of individuals to execute legal documents such as leases. So for more and more hunting clubs, incorporating is becoming an increasing reality.

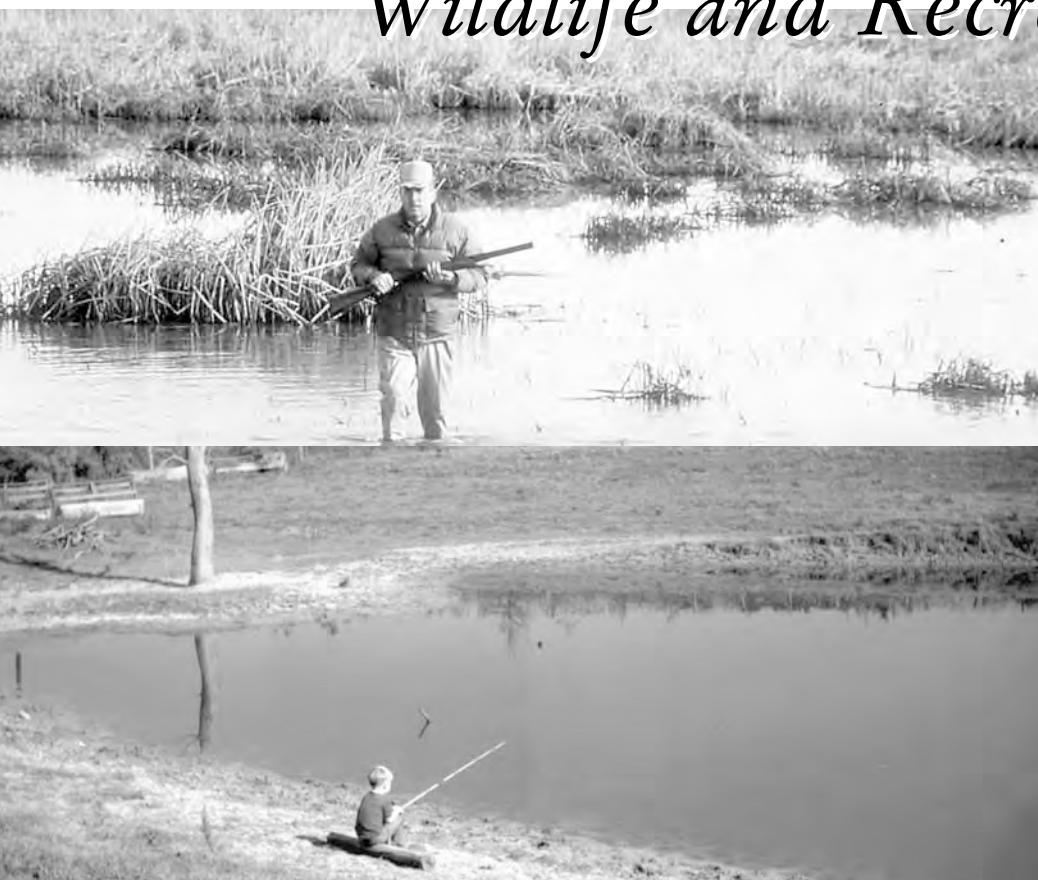
C. Benefits of Leasing Land.

There are benefits for the land owner in leasing his land to a hunting club. The money derived from the lease should pay the property taxes on the land along with a little extra spending money in the land owner's pocket. If the hunting club is a good care taker of the land, then the land owner will not have to worry about upkeep of the land, trespassers and poachers. Having a hunting club on the land may help protect the land from any boundary encroachments, fires, and maintenance of buildings and roads on the property. Land owners should always strive to lease their land to responsible, careful individuals concerned with protecting the land, preserving the wildlife and turning the land into a great hunting area. In the same manner, hunting clubs must respect the land owner and treat the property as if it were their own. Access to far too many lands has been lost already as a result of irresponsible hunters who have aggravated land owners beyond repair.

These materials should not be used as a substitute for professional legal counsel. They are presented for educational purposes, but the specific facts of any given situation will dictate potentially different conclusions.

NATURAL RESOURCE ENTERPRISES

Wildlife and Recreation



Hunting Leases: Considerations and Alternatives for Landowners

Interest is growing in the South and throughout the United States for landowners to provide recreational access to their land for sportsmen and others to hunt, fish, and enjoy other types of outdoor recreation. For many farm, ranch, forest, and other landowners, alternative enterprises may provide an opportunity to sustain their natural resource base, maintain their quality of life, and increase annual profits.

Offering access to private land for recreational uses by the public can be a viable alternative enterprise. Natural resource-based alternative enterprises on private land range from producing products such as pine straw for

mulching, to providing access for bird watching, trail riding, and hunting and fishing.

Recreational hunting and fishing leases have become an important source of supplemental income for many landowners in recent years, and the demand for access to private lands for recreational uses continues to grow. When these enterprises are appropriately developed and implemented, they will contribute to local community economies in many ways. However, there are many things to consider before implementing a hunting lease.

Not all private landowners will want to open their lands for such access and use, but for those who feel they would like to explore such

enterprises, some tradeoffs will be necessary. Landowners must consider and manage such enterprises as an integral part of their total operations. They must also keep in mind the long-term sustainability of their natural resource base on which the total operation depends.

The information in this publication helps you as a landowner make informed decisions about one potential alternative natural resource-based enterprise – hunting leases. Much of the information in this publication comes from a number of sources, including scientific papers presented at various conferences, and from personal experience working with private landowners and recreational users over the past 35 years.

This publication does not provide all-inclusive, definitive information on hunting leases for any individual. Natural resource produc-

tivity and sustainability capabilities in different areas are not necessarily the same. Each geographic site capability is different. Each landowner's objectives and management skills are different. Figures in this publication for fees charged per acre and minimum amounts of acreage suggested for specific kinds of hunting operations may not be appropriate for every operation. Some of the figures provided are "rule of thumb" or "ballpark" estimates for consideration based on regional or statewide surveys and informal discussions with enterprise operators. Liability insurance sources provided are simply sources known, and it is very likely there are many other providers. Sample lease agreements and sample hunting club bylaws are simply templates that you, a manager, or a hunting club group may find useful to customize for individual and operation needs.

TYPES OF HUNTING LEASES

A hunting lease is an agreement between you as the landowner (lessor) and hunters (lessees) that grants the hunter access rights for hunting game animals (and other specified activities) on your property for a specified time period. Hunters usually pay you an agreed-upon dollar amount per acre or per hunter. However, in some leases you may agree to a smaller combination of dollars per acre or per hunter with a written agreement that the hunter or hunters perform some service in exchange for the privilege of hunting access. There are numerous kinds of leases and agreements based on the agreed-upon collaboration (usually in writing) between the lessor and lessee. Following are some common types of hunting leases:

■ *Long-Term*

- ✓ Seasonal lease – all species of game legal to hunt
- ✓ Seasonal lease – specified animal or animals
- ✓ Annual or multi-year lease – all species
- ✓ Annual or multi-year lease – specified game animal or animals.

■ *Short-Term*

- ✓ Daily hunting, often by permits
- ✓ Weekly hunts
- ✓ Multi-day (three to five) day hunts
- ✓ Special Season Hunts – such as bow, muzzle-loader, or rifle only.

The most common types of hunting leases are the long-term annual and long-term seasonal. Under this type of leasing system, you generally provide individual hunters or groups of hunters the privilege of access to your land for hunting for a season, a full year, or for several consecutive years.

This type of leasing usually allows the hunter or hunters the privilege of hunting legal game species during specified open seasons, with fees assessed on a cost per-acre or lump sum basis. These leases let you specify which game species can be hunted, and you can reserve hunting rights for yourself, your guests, and immediate family. In fact, depending on the interests of the lessee and your willingness, these leases can be customized to the satisfaction of both you and the lessee, as well as the agreed-upon price paid for the privilege of leasing.

For many landowners, such long-term seasonal or annual leases for a set price per acre or lump sum seem to be the easiest to negotiate and require the least oversight. If you are satisfied with this type of arrangement, the lease fee is satisfactory, and the lessee(s) has demonstrated appropriate and responsible care of the land and resources, you can continue such annual leases on a multi-year arrangement.

Long-term leases have advantages and disadvantages. The advantages are that such leases generally result in better landowner-sportsmen relationships, because you get to know the lessee(s) personally, helping to build trust over time, and the sportsmen get to understand what your objectives are, and they become interested in helping manage the properties to meet these objectives. The longer time that lessee(s) lease a property, the better they come to know it, and the more likely they will become interested in working with you to improve habitat management for wildlife. The more provincial interest they develop in the property, the more they will help to prevent trespass and poaching. If you are satisfied with the long-term arrangement, you can project anticipated income.

The disadvantage is that sometimes such long-term lease arrangements make it difficult to increase lease fees when you need to, and some lessee(s) take such an interest that they begin to think of the property as theirs and forget to honor your rights. However, both sportsmen and landowners are more often willing to make time, labor, and financial investments in leased property when they know they have a secure arrangement for more than one year or season. Such long-term lease arrangements can be for specific game species only or offer hunting for all legal game species to the lessee(s). It can include such other activities as scouting before hunting seasons, camping, and fishing if available.

If you are active in the day-to-day management of the property, you may also choose to lease access rights for hunting one particular species to one hunter or group of hunters and to yet another hunter or group of hunters for hunting another species. An example would be deer hunting to one group and spring turkey hunting to another, or dove hunting to one group and waterfowl hunting to another. Obviously this works best when seasons do not overlap, and it generally requires intensive involvement by you or someone you assign such management responsibilities to. These leases usually return the most annual income but clearly also require the most intensive involvement of you or a

manager. They also require more labor, time, and habitat management investments, such as providing dove fields, food plots, waterfowl blinds, and other requirements.

Short-term leases can be on a daily permit basis, such as for dove hunting; a per weekend basis for deer or waterfowl hunting; a weekly basis during a special season, such as bow hunting or muzzle-loader hunting; or for a one-season, special management type of hunt, such as a late-season doe hunt only. Some of these hunts can be packaged to include guides, lodging if available (on the lease property or at a local motel), and meals. Clearly this type of leasing arrangement requires intensive management and marketing for greatest success, but it can yield a higher rate of return and does not obligate the entire property for an entire hunting season or year. In other words, you can provide access to limited portions of the land for shorter periods of time and can limit the hunting to the species desired.

Hunting leases can be developed by sportsmen contacting you directly about the potential of leasing your land for hunting rights access. Or a broker may make such arrangements. However, more and more landowners interested in leasing their land for hunting access are finding that newspaper and magazine ads or a web site will often locate willing hunters or groups of hunters interested in leasing tracts of land for hunting privileges. There can be some advantage for some owners, particularly non-resident landowners, in having a broker take care of the advertising and locating and dealing with responsible lessee(s) and with neighboring landowners. Another advantage is the broker can help ensure the lessee(s) honor their lease and pay on time. However, such brokers will come at a cost.

Before beginning a hunting lease program, you need to consider a number of things and be prepared to spend some time, labor, and resources to determine the value of your resources, how to manage and sustain them as renewable natural resources, what your long-term objectives are, and if such a leasing program is compatible with your other land management objectives. You also should recognize the advantages and disadvantages of leasing your land for hunting, such as these:

■ *Advantages*

- ✓ Can be a dependable source of additional annual income

- ✓ Can provide in-kind labor assistance from lessee(s)
- ✓ Can help reduce trespass problems
- ✓ Can help you gain better control of who is using the land for what purposes
- ✓ Can complement other land management operations
- ✓ Can improve other recreational opportunities
- ✓ Can benefit local community economy
- ✓ Can help you better manage wildlife habitat and populations

■ *Disadvantages*

- ✓ Increased liability concerns and costs
- ✓ Will require increased landowner or manager involvement of dealing with lessee(s)
- ✓ Could mean some tradeoffs in other operations
- ✓ Could present conflicts with neighbors
- ✓ Likely to require some investment in habitat and access management
- ✓ Will require record keeping, evaluation, and business management

HUNTING LEASE AGREEMENTS

Without question, most hunting leases should be undertaken only with a written agreement. Such an agreement serves as a contract that protects the agreed-upon rights of both you (lessor) and the sportsman (lessee). The significance of a well-considered written lease agreement cannot be over emphasized, since it is the foundation for a successful hunting lease program. Effective hunting lease agreements protect your interests yet allow enough flexibility to permit enjoyment of the access rights provided to the sportsmen or lessee(s). Such leases can be developed from “boiler-plate” examples but can be customized to protect you against later conflicts. A lease must be well thought out before being finalized and agreed to by you and lessee(s). Most of the potential conflicts between you and lessee(s) can be prevented, and a good working relationship can be maintained by having a mutually agreed-upon written lease. Some “boiler-plate” examples of written hunting leases are provided in the back of this publication for examination and modification

to meet individual needs. Your needs and desires are paramount but must be tempered by recognizing the needs and desires of the lessees and what they are willing to pay for.

■ *Considerations when Developing A Lease Agreement*

- ✓ **References** – If you are not familiar with sportsmen or groups who desire to lease your property, you should not hesitate to ask for references. You may get references from other landowners who leased to the lessee(s) previously or from Conservation officers or community leaders who know the person(s).
- ✓ **Proof of liability insurance** – As part of the lease agreement you can require the lessee(s) to pay for liability insurance (with your name listed on the policy) and provide proof of coverage by keeping a copy of the insurance policy with proof of purchase. Requirements for liability insurance can be written into the lease agreement. Be sure such policies cannot be canceled during the lease time. This precaution transfers a large portion of the liability to the lessee(s). Otherwise you are responsible for the costs of appropriate liability insurance coverage to ensure your protection.
- ✓ **Establish and maintain open communication** – An open channel of communication from the beginning prevents potential misunderstanding between you and sportsmen. For hunting clubs or organized groups of lessees, try to arrange a time before the hunting season to meet with the group and get to know them.
- ✓ **Organized groups/hunting clubs** – Hunting clubs should be well organized and governed by self-regulating bylaws and have a contact person designated. A sample of hunting club bylaws is provided in the back of this publication. You should receive a copy of adopted bylaws.
- ✓ **Lease to local sportsmen when possible** – Local sportsmen, if willing to pay, can often help look after property. Having such local participation often avoids the local resentment of the “outsider” image.
- ✓ **Annual meetings** – You should meet with sportsmen groups or hunting clubs who lease your land at least once each year before the hunting season to discuss land use changes,

modifications that may be needed to the lease agreement, or your need for some help improving habitat or hunting opportunities.

- ✓ **Limit hunters and guests** – For the benefits of safety, enjoyment, and protection of the resource, the number of hunters must be restricted. For example, too many hunters using the property at any one time during the season may compromise the safety, enjoyment, and sustainability of the resources. Here are some rules of thumb for consideration with exceptions for different kinds of habitat and hunting: for deer hunting, one hunter per 100 acres; for waterfowl hunting, one hunting party per 100 acres of wetlands or waterfowl habitat; and for turkey, one hunter per 200 acres.
- ✓ **Written rules** – Consider drafting written rules aimed at preventing potential accidents and protecting property, especially if there are known hazards, such as old wells, sinkholes, and other risks to personal safety on the property. Make sure all lessees are aware of these written rules, and have them sign a statement that they have read and understand these rules.
- ✓ **Incorporation** – Hunting clubs representatives (officers) cannot legally represent the entire club when signing a lease agreement unless the club or group is incorporated. If the club or group is not incorporated, each member of the club/group must sign and date the written lease agreement.
- ✓ **Liability risk reduction** – In addition to requiring the club/group to purchase an insurance policy to cover liability, you should practice a risk reduction program that reduces all known hazards on the property. Keep records of such efforts to reduce or eliminate known and potential risks to lessees. You should keep accurate records in case of a libel suit. Identify hazards you cannot reduce or eliminate, and explain them to lessees with a map and written description.

Here are other considerations: If ATVs are to be used on property, require additional rider insurance from lessees. Avoid single-strand cable gates, or have them clearly marked and flagged. If portable tree stands are to be used, make sure lessees' liability insurance covers such use, or require permanent stands to be used. In accord with state law, require sportsmen to pass an approved hunter safety program and

show a certificate of completion. (Anyone born after January 1, 1972 is legally required to complete a hunter education course before purchasing a Mississippi hunting license. Also, anyone 12 years of age but under 16 years of age must have a certificate showing completion of a hunter education course approved by the Department of Wildlife, Fisheries, and Parks before hunting in Mississippi.)

- ✓ **Attorney lease review** – Have an attorney review the written lease before it is agreed to and signed by either party. This helps protect both parties and clarifies that the agreement is legal and binding.
- ✓ **Up-front payment** – The agreed-upon lease payment should be made before the hunting season begins, preferably before the date of the lease period. This ensures that payment is made before the hunt begins, and it allows the owner the potential of investing the funds and earning interest.
- ✓ **Permanent structure policy** – You may or may not want the lessee to put up permanent structures, such as buildings, sheds, or cabins. If you do permit any of these, you should decide what types of structures to allow and what should happen to these structures if and when the lease is terminated.
- ✓ **Vehicle restriction** – You may want to restrict what type of vehicles may be used on identified roads and trails and/or restrict the use of particular types of vehicles to certain roads on the property.
- ✓ **Notification of presence** – You may require hunters to check in and out via a check station or notify you in advance by phone or in writing when hunting or otherwise accessing the property.
- ✓ **Arbitration** – Disputes can arise, regardless of how well the lease agreement is written. Some leases specify using arbiters who were agreed upon in advance by both parties. The arbiter should be a neutral party, such as an attorney, conservation officer, or other mutually agreed-upon individual.
- ✓ **Game law violations** – In case game laws are violated, unintentionally or intentionally, the club/group bylaws need to ensure the violation is reported to both the local conservation officer and to the landowner.

- ✓ **Automatic lease renewal** – If you are pleased with the lessee(s), you may want to provide for an automatic lease renewal agreement consideration. This can be put into effect barring conflicts or need for some change in the agreement, if agreed upon 90 days before the lease terminates. This may be an advantage for both parties if things are going well.

■ *Suggested Items To Include In a Written Hunting Lease*

- ✓ Your name, address, and phone number and the same information for the sportsmen, group, or club (lessees).
- ✓ The purpose of the hunting lease, describing the species of game allowed to be hunted as well as other activities allowed on the property, such as camping, fishing, scouting, permanent structure placement, and disposal.
- ✓ A description of the property with the location of the tract, boundaries, and areas off limits to hunting access. You should also provide a map with the property description. It is wise to conduct a tour of the property or tract to be leased with lessees to point out clearly marked property boundaries as well as any known restricted-use areas or hazards. In the description it is helpful to point out the present condition of the property, such as 20-year-old pine plantation, row crop areas, pasture, restricted areas, and reasons for restrictions.
- ✓ The duration of the lease, describing the beginning and ending dates of the lease, whether seasonal or annual, or longer term.
- ✓ The method of lease payment, stating how much the lessee(s) must pay and a date when payment must be received. Penalties for late payment can be described but must be well in advance of the beginning of the hunting season.
- ✓ Damage provisions and a deposit (if you think this is needed) to cover the costs of damage or loss of your property, livestock, or other resources if not repaired or compensated. Such damage provisions should specify that the lessee(s) are responsible for any damages or losses they or their guests (if allowed) cause to the property or to your assets. You should return damage deposits to the lessee(s) if damage is corrected or does not occur during the effective lease period.
- ✓ A termination of a lease clause with provisions to cancel a lease agreement if either party fails to abide by the terms of the written lease agreement, such as a lessee's violating state or federal game regulations. It must also ensure your or your heirs' rights to cancel a lease if you sell the property or if you die within the effective lease period.
- ✓ A subleasing clause that specifies whether the lessee(s) can sublease or assign leasing rights to a third party. You should avoid the idea of subleasing your property to third party access by the original lessee(s).
- ✓ The lessee's responsibilities should be clearly defined within the agreement to include these items: closing gates and repairing broken fences; obeying all state and federal game regulations; helping put out wildfires; evicting trespassers or at least immediately contacting the owner or local law enforcement personnel; adhering to the management plan regarding game harvest recommendations; keeping good game harvest records; appropriate posting of the property; restrictions on the use of alcohol; and off road vehicles as you determine.
- ✓ Your (lessor) responsibilities should be clearly defined within the lease to include duties (as you agree to provide) such as maintaining roads, planting food plots or preparing fields for dove hunting, and providing facilities for lodging or for cleaning and storing harvested game. Obviously these duties and amenities have a cost, and you will have to consider them in the cost of the lease.
- ✓ Your rights as the landowner must be clearly stated in the lease, such as the right to continue to manage the land to meet your identified objectives, the right to allow family members defined hunting privileges, and the right to request removal of a club or group member who violates property or approved behavior codes.
- ✓ You can add indemnity clauses or "hold harmless" disclaimers to the lease agreement. These may protect you from liability if someone is injured on your land. You can use them as proof that an injured lessee assumed the risks of doing a particular activity like climbing a tree or

crossing a fence. They do not, however, relieve you of liability associated with demonstrated negligence.

- ✓ The number of members allowed in lessee club/group.
- ✓ The number of guests, if allowed, and the number of total lessee(s) and invited guests that may be on the property to hunt at any specific time.

■ *Determining Hunting Lease Price Structure*

If you have no experience leasing land for hunting access, one of the most difficult decisions is determining a fair market price that is competitive yet gives you a reasonable return for the lease and any services or amenities provided. The following are known methods but are by no means the only methods:

- ✓ **Break even plus 10 percent** – The lease price is based on management and costs associated with the lease operation plus 10 percent to cover unforeseen costs and the need for the lease to cover operational costs and land taxes.
- ✓ **Habitat valuation** – The lease price is determined from a subjective rating of the quality and quantity of wildlife habitat available. For example, if the wildlife habitat and populations have been managed to provide high populations of wildlife and better than average hunting opportunities, the value of the lease may be higher, or if the lessee(s) want to limit or keep out other hunters that the property could reasonably sustain, they may have to pay a premium price for that.
- ✓ **Baseline plus value-added** – You charge a base price per acre plus charges on improvements made, amenities, or services provided.
- ✓ **Competitive pricing** – You base the lease price on the going rate of other leases in the area or lease prices charged elsewhere for similar access, services, and amenities provided.
- ✓ **Sealed bid** – This is similar to timber sales in that you develop a description of the hunting lease and what it offers, and you request sealed bids. You can do this via advertising or by contacting individuals or sportsmen groups who may have an interest.

HOW TO FIND A RESPONSIBLE LESSEE

It may be difficult to identify and locate responsible hunters who will take an interest in the land and resources being leased and who will respect the property and abide by terms and conditions in a written lease. It will pay dividends in the long-term, however. Without appropriate screening of lessee(s), you may find yourself with an unmanageable group who have no regard for your rights or maintaining the property and the sustainability of the habitat and wildlife. Many problems could arise, such as trash dumping, wildfires, road and tree damage, illegal hunting, damage to facilities and livestock, and over harvest of the game resource. For the most part, you can avoid these problems by using these practices:

- ✓ leasing to known sportsmen with some local members
- ✓ developing and using a well-constructed written lease that protects your interests and that every member, if the club or group is not incorporated, must sign, or if incorporated, that the representative makes sure every member has read and understands.

Remember that after you locate interested lessee(s) ask them to provide a list of references, and use this list to ensure they have not had problems in the past leasing lands from other landowners and are known to be responsible and ethical sportsmen. If the lessee(s) pass this background check, conduct a personal interview with the lessee(s) or their representative, if the group is incorporated. Develop a list of questions in advance that you want to have answered, and don't be afraid to ask tough questions. Then use all the information to make an informed decision about leasing to the lessee(s) and if you think they are willing to accept and abide by the terms of the written lease agreement.

■ *Trespass*

Mississippi law forbids all persons to enter private lands without permission from the landowner. Hunting, fishing, or trapping on land without permission of the landowner is a misdemeanor punishable by a fine and possible imprisonment. The trespass law is enforceable by conservation officers and county sheriffs.

SUMMARY

Recreational access leases have become an important source of alternative income for many forest and agricultural landowners in the South as well as in other parts of the United States. Most forest industry landowners and managers now consider income from recreational access leases as a vital part of their resource and financial decision-making process.

If you as a private landowner consider such leases as an alternative enterprise to supplement your income, you should understand the advantages and disadvantages of the leases. You also must consider and remember you are not selling wildlife, which is publicly owned. You are selling the opportunity and privileges that go with access to your land for the purposes specified in the written lease agreement. Having some idea of the habitat quality and status of wildlife populations on your land will be important in making decisions. The sustainability of

your renewable resources is the key to long-term income potential as well as sustainability of the operation. Recreational access/hunting leases can become an enjoyable and rewarding experience for you (lessor) and sportsmen (lessees) with advance planning, preparation, management, and communication.

As far as the economic potential of hunting leases, the range of returns varies considerably based on the type of lease. One example would be high quality waterfowl blinds leases that bring the highest annual returns per acre of access, versus leases for small game hunting that may be as low as 50¢ per acre, to high quality big game leases that may go for as much as \$25.00 per acre or more in some areas. A recent study of fee hunting in Mississippi reported that for the 1997-98 season, annual net revenues averaged \$3.91 per acre statewide by landowners leasing their lands for hunting.



SAMPLE HUNTING LEASE AGREEMENT

This hunting lease agreement is for educational purposes only. It is important to check with your attorney before writing and signing a binding legal agreement. You may want this lease to be more detailed or include more requirements, or you may want it to be less detailed. If you want to provide other services or rights, such as guides, cleaning game, or allowing the lessee to improve the habitat, you should include those provisions.

STATE OF:

COUNTY OF:

TRACT:

This Lease Agreement (the "Lease") entered into as of the day of _____, by and between _____ hereinafter referred to as Lessor, and _____ a/an (state whether an individual, a partnership, corporation, or unincorporated association) hereinafter referred to as Lessee.

The Lessor agrees to lease the Hunting Rights, as defined below, on _____ acres more or less, to Lessee for _____ (\$_____/Acre), for a term commencing on _____, (the "Commencement Date") and ending on _____ (the "Expiration Date") on the following described property (the "Land").

See Attached Description

The Hunting Rights shall consist of the exclusive right and privilege of propagating, protecting, hunting, shooting and taking game and waterfowl on the Land together with the right of Lessee to enter upon, across and over the Land for such purposes and none other.

This Hunting Lease Agreement shall be subject to the following terms and conditions:

PAYMENT

1. The Lessee shall pay to the Lessor _____, the amount of one (1) year's Rent in full, on or before _____ by check payable to Lessor.

COMPLIANCE WITH LAW

2. Lessee agrees for itself, its licensees and invitees to comply with all laws and regulations of the United States and of the State and Local Governments wherein the Land lies relating to the game or which are otherwise applicable to Lessee's use of the Land. Any violation of this paragraph shall give Lessor the right to immediately cancel this Lease.

POSTING

3. Lessee shall have the right to post the Land for hunting to prevent trespassing by any parties other than Lessor, its Agents, Contractors, Employees, Licensees, Invitees, or Assigns provided that Lessee has obtained the Lessor's prior written approval of every sign designed to be so used. Every such sign shall bear only the name of the Lessee. Lessor reserves the right to prosecute any trespass regarding said Land but has no obligation to do so.

LESSOR'S USE OF ITS PREMISE

4. Lessor reserves the right in itself, its Agents, Contractors, Employees, Licensees, Assigns, Invitees, or Designees to enter upon any or all of the Land at any time for any purpose of cruising, marking, cutting or removing trees and timber or conducting any other acts relating thereto and no such use by Lessor shall constitute a violation of this Lease. This right reserved by Lessor shall be deemed to include any clearing, site preparation, controlled burning and planting or other forestry work or silvicultural practices reasonably necessary to produce trees and timber on the Land. Lessee shall not interfere with Lessor's rights as set forth herein.

GATES/BARRIERS

5. Lessor grants to Lessee the right to install gates or other barriers (properly marked for safety) subject to the written permission of Lessor and the terms and conditions relating thereto as set forth elsewhere in the Lease, on private roads on the Land, and Lessee agrees to provide Lessor with keys to all locks prior to installation and at all times requested by Lessor during the term of this Lease.

ROAD OR FENCE DAMAGE

6. Lessee agrees to maintain and surrender at the termination of this Lease all private roads on the Lands in at least as good a condition as they were in on the date first above-referenced. Lessee agrees to repair any fences or other structures damaged by itself, its licensees or invitees.

ASSIGNMENT

7. Lessee may not assign this Lease or sublease the hunting rights the subject of this Lease without prior written permission of Lessor. Any assignment or sublease in violation of this provision will void this Lease and subject Lessee to damages.

FIRE PREVENTION

8. Lessee shall not set, cause or allow any fire to be or remain on the Land. Lessee covenants and agrees to use every precaution to protect the timber, trees, land, and forest products on the Land from fire or other damage, and to that end, Lessee will make every effort to put out any fire that may occur on the Land. In the event that any fire shall be started or allowed to escape onto or burn upon the Land by Lessee or anyone who derives his/her/its right to be on the Land from Lessee, Lessor shall have the right immediately to cancel this Lease without notice, and any payments heretofore paid shall be retained by Lessor as a deposit against actual damages, refundable to the extent such damages as finally determined by Lessor are less than said deposit. In addition, Lessor shall be entitled to recover from Lessee any damages which Lessor sustains as the result of such fire. Lessee shall immediately notify the appropriate state agency and Lessor of any fire that Lessee becomes aware of on Lessor's lands or within the vicinity thereof.

INDEMINIFICATION AND INSURANCE

9. Lessee shall indemnify, defend and hold harmless Lessor, its directors, officers, employees and agents from any and all loss, damage, personal injury (including death at any time arising therefrom) and other claims arising directly or indirectly from or out of any occurrence in, or upon, or at the said Lands or any part thereof relating to the use of said Land by Lessee, Lessee's invitees or any other person operating by, for or under Lessee pursuant to this Lease. Lessee further agrees to secure and maintain a \$1,000,000 public liability insurance policy in connection with the use of the Land with Lessor named as

insured and with such insurance companies as shall be agreeable to Lessor. This indemnity shall survive the termination, cancellation or expiration of this Lease.

RULES AND REGULATIONS

10. Lessor's rules and regulations attached hereto as Exhibit "A" are incorporated herein by reference and made an integral part hereof. Lessee agrees that any violation of said rules and regulations is a material breach of this Lease and shall entitle Lessor to cancel this Lease as its option effective upon notice by Lessor to Lessee of such cancellation.

Lessor reserves the right from time to time, to amend, supplement or terminate any such rules and regulations applicable to this Lease. In the event of any such amendment, supplement, or termination, Lessor shall give Lessee reasonable written notice before any such rules and regulations shall become effective.

MATERIAL TO BE SUBMITTED TO LESSOR

11. If this Lease is executed by or on behalf of a hunting club, Lessee shall provide Lessor, prior to the execution hereof, a membership list including all directors, officers, and/or shareholders, their names and addresses and a copy of Lessee's Charter, Partnership Agreement and By-Laws, if any. During the term of this Lease, Lessee shall notify Lessor of any material change in the information previously provided by Lessee to Lessor under this paragraph 11.

LESSEE'S LIABILITY RE: TREES, TIMBER, ETC.

12. Lessee covenants and agrees to assume responsibility and to pay for any trees, timber or other forest products that may be cut, damaged, or removed from the Land by Lessee or in connection with Lessee's use of the Land or any damages caused thereupon.

NO WARRANTY

13. This Lease is made and accepted without any representations or warranties of any kind on the part of the Lessor as to the title to the Land or its suitability for any purposes; and expressly subject to any and all existing easements, mortgages, reservations, liens, rights-of-way, contracts, leases (whether grazing, farming, oil, gas or minerals) or other encumbrances or on the ground affecting Land or to any such property rights that may hereafter be granted from time to time by Lessor.

LESSEE'S RESPONSIBILITY

14. Lessee assumes responsibility for the condition of the Land and Lessor shall not be liable or responsible for any damages or injuries caused by any vices or defects therein to the Lessee or to any occupant or to anyone in or on the Land who derives his or their right to be thereon from the Lessee.

USE OF ROADS

15. Lessee shall have the right to use any connecting road(s) of Lessor solely for ingress, egress, or regress to the Land; such use, however, shall be at Lessee's own risks and Lessor shall not be liable for any latent or patent defects in any such road nor will it be liable for any damages or injuries sustained by Lessee arising out of or resulting from the use of any of said Lessor's roads. Lessee acknowledges its obligation of maintenance and repair for connecting roads in accord with its obligation of maintenance and repair under paragraph 6.

SURRENDER AT END OF TERM

16. Lessee agrees to surrender the Land at the end of the term of this Lease according to the terms hereof. There shall be no renewal of this Lease by implication or by holding over.

MERGER CLAUSE

17. This Lease contains the entire understanding and agreement between the parties, all prior agreements between the parties, whether written or oral, being merged herein and to be of no further force and effect. This Lease may not be changed, amended or modified except by a writing properly executed by both parties hereto.

CANCELLATION

18. Anything in this Lease to the contrary notwithstanding, it is expressly understood and agreed that Lessor and Lessee each reserve the right to cancel this Lease, with or without cause, at any time during the Term hereof after first giving the other party thirty (30) days prior written notice thereof. In the event of cancellation by Lessee, all rentals theretofore paid and unearned shall be retained by the Lessor as compensation for Lessor's overhead expenses in making the Land available for lease, and shall not be refunded to Lessee.

APPLICABLE LAW

19. This Lease shall be construed under the laws of the State first noted above.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be properly executed as of the day and year first above written.

WITNESSES:

SAMPLE HUNTING LEASE AGREEMENT

This hunting lease agreement is for educational purposes only. It is important to check with your attorney before writing and signing a binding legal agreement. You may want more details or fewer details than this lease includes. If you want to provide other services or rights, such as guides, cleaning game, or allowing the lessee to improve the habitat, they should be included.

_____, owner of _____ farm, (legal description of the land), County, (state), herein referred to as "Landowner," for good and sufficient consideration, as hereinafter set forth, leases hunting rights on those portions of the _____ farm, hereinafter described, to _____ and others so executing this agreement and hereinafter referred to as "Lessees," on the following terms and conditions:

1. The tract of land, hereinafter referred to as "lease" upon which hunting rights are granted, is the _____ farm described herein consisting of approximately _____ acres.

(description of land with aerial photograph if available)

Lessees understand the location and boundaries of said tract and agree that no hunting rights are granted hereunder on any tract other than the tract herein designated and that no hunting or discharging of firearms shall be done by Lessees while traveling to or from the lease.

2. This agreement and the rights and duties granted and incurred hereunder shall be for a term commencing with the opening of _____ season in 20____, and the closing of _____ season in 20____, as set for _____ County, (state), under regulations enforced by the (state wildlife agency) unless terminated pursuant to provisions of this agreement hereinafter set forth. Provided that either the Landowner or Lessee may cancel this agreement by giving written notice of its intent to do so thirty (30) days prior to the date that rental for the second or third year of the term here provided is due. In which event, Lessee shall be relieved of the obligation to pay further rental under the terms and shall deliver possession of the premises.
3. The consideration to be paid by Lessee to Landowner at _____ County, (state), is \$_____ in cash, one-half to be paid on or before June 1, 20____, and the balance to be paid on or before October 1, 20____. Failure to pay the second installment shall thereupon terminate and cancel the lease and the amount already paid shall be forfeited as liquidated damage for the breach of the agreement. A \$_____ deposit will be required to insure that lease premises are left in a clean and orderly condition. Farm personnel will inspect the premises within 30 days after the lease expires. If cleanup is necessary, the farm will accomplish such, and the \$_____ deposit will be forfeited by the Lessees. If the premises are determined by farm personnel to be clean and orderly, the \$_____ deposit will be returned to the Lessees within 60 days after expiration of the lease.
4. Lessees shall not assign this lease or sublet the leased premises without the written consent of _____.

5. Lessees shall at all times abide by and obey all state and federal hunting laws and regulations and Lessee shall be responsible for the conduct of Lessee's guests or members in connection with said hunting laws and shall be responsible for any violation of said hunting laws or regulations by said Lessee, its guests, or members. Any violation of the hunting laws or regulations of any governmental authority shall give rise to the right of immediate cancellation of this lease by the Landowner upon written notice to Lessees, and in the event of the cancellation of said lease due to violation of game laws by Lessees, its guests or members, no prorata of the rent previously paid shall be made, same to be forfeited as liquidated damages, and Lessees shall, upon receipt of such notice, immediately vacate and surrender unto the Landowner possession of the leased premises.

Lessees shall, during the period in which it has access to the leased premises, continually protect same against trespassers and squatters, and to the best of Lessee's ability have such persons apprehended and prosecuted.

6. This lease agreement is expressly made subject to the "General Conditions of the Lease," which are attached hereto as Exhibit "A," and made a part hereof for all purposes the same as if copied herein verbatim.
7. If Lessees default in the performance of any of the covenants or conditions hereof, including the "General Conditions of Lease," which are attached hereto as Exhibit "A," then such breach shall cause an immediate termination of this lease and a forfeiture to Landowner of all consideration prepaid. The Lessee shall have no further rights under the term of this lease agreement. In the event a lawsuit arises out of or in connection with this lease agreement and the rights of the parties thereof, the prevailing party may recover not only actual damages and costs but also reasonable attorneys' fees expended in the matter.
8. Landowner shall not be liable for any injuries, deaths, or property damage sustained by (1) any Lessees hereto, (2) any employees of Lessees, (3) any business invitees of Lessees, (4) any guest of Lessees, (5) any person who comes to the leased premises with the express or implied permission of Lessees on the _____ farm with permission of the Lessee hereunder except for such injury, death, or property damage as may be sustained directly as a result of Landowner's sole negligence. Lessee hereunder jointly and severally agrees to indemnify Landowner, his agents or employees against any claim asserted against Landowner or any of Landowner's agents or employees as a result of personal injury, death or property damage arising through: (1) the negligence of a Lessee or any persons on the farm with the permission of a Lessee, or (2) through the concurrent negligence of a Landowner or his agents or employees any one or more of Lessees or any person on the _____ farm with the permission of the Lessee.

All minors permitted by Lessee to hunt, fish, or swim on the leased premises shall be under the direct supervision of one of their parents (or guardian) and when children are present on the leased premises, the parents shall be fully responsible for their acts and safety and agree to hold Landowner harmless therefor, regardless of the nature of the cause of damage, whether property or personal injury, to themselves or others.

9. The leased premises are taken by Lessee in an "as is" condition, and no representation of any kind is made by _____ regarding the suitability of such premises for the purpose for which they have been leased.
10. This lease may not be terminated or repudiated by Lessee except by written notice signed and acknowledged in duplicate before a Notary Public by Lessee, and such termination or repudiation shall not be effective until Lessee has mailed one executed copy thereof to Landowner by registered mail and filed the other executed copy thereof for record in the Office of the County Clerk, _____ County, (state). This lease shall be binding upon the distributees, heirs, next of kin, successors, executors, administrators, and personal representatives of each of the undersigned. In signing the foregoing lease, each of the undersigned hereby acknowledges and represents:

- (a) That he has read the foregoing lease, understands it, and signs it voluntarily; and
- (b) That he is over 21 years of age and of sound mind;

In witness whereof, the parties have set their hands this the _____ day of _____, 20____.

LESSEES:

DATE:

LANDOWNER:

DATE:

WITNESS:

DATE:

STATE OF _____

COUNTY OF _____

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 20____, by _____ and _____.

My commission expires: _____

Notary Public

EXHIBIT "A," GENERAL CONDITIONS OF LEASE (EXAMPLES OF OPTIONAL CLAUSES)

_____ LANDOWNER, LEASE TO _____ LESSEE

These general conditions of lease are applicable to the lease agreement between _____, hereinafter referred to as LANDOWNER, and _____, LESSEE. Lessee and all persons authorized to Lessee to hunt upon the leased premises shall be hereinafter collectively referred to as "Hunters."

1. It will be the responsibility of the Lessee to furnish each hunter or guest with a copy of these general conditions of lease.
2. Lessees understand and agree that the leased premises are not leased for agricultural or grazing purposes and, consequently, taken subject to the rights thereof.
3. Lessee acknowledges that Landowner owns the property herein leased, primarily for agricultural purposes and the growing of timber. Lessee shall in no manner interfere or obstruct Landowner's farming, forestry, or livestock operations.
4. Landowner reserves the right to deny access to the leased premises to any person or persons for any of the following reasons: drunkenness, carelessness with firearms, trespassing on property of adjoining landowners, acts which could reasonably be expected to strain relationships with adjoining landowners, or any other activities which to the ordinary person would be considered objectionable, offensive, or to cause embarrassment to Landowner or be detrimental to Landowner's interest. Failure of Lessee to expel or deny access to the premises to any person or persons after being notified to do so by Landowner may result in the termination of this lease at discretion of Landowner.
5. No hunter shall be allowed to:
 - (a) Shoot a firearm from a vehicle;
 - (b) Erect a deer stand within 150 yards of the boundary of the herein leased premises;
 - (c) Permanently affix a deer stand in trees;
 - (d) Abuse existing roads by use of vehicles during wet or damp conditions.
 - (e) Fire rifles or other firearms in the direction of any house, barn, other improvements or across any haul road located on the leased premises;
 - (f) Build or allow fires on the leased premises, except in those areas specifically designated by Landowner in writing, and, in event, shall be kept fully liable for such fires; and
 - (g) Leave open a gate found closed or close a gate found open.
6. Hunters shall at all times maintain a high standard of conduct acceptable to _____.

HUNTING CLUB BYLAWS

Hunting Club bylaws should contain provisions that govern the day-to-day operation of the club. The bylaws should be adapted to local conditions that affect the club, its relationship with landowners(s), and the well-being of the land and wildlife resources. You should keep the bylaws as simple, concise, and understandable as possible for the benefit of the members and yourself. Some clubs develop bylaws that are too complex and too extensive for the basic needs and are too difficult to manage or enforce adequately. Bylaws should be written to be basic to the operation of the club or group's interest and to add others as needed based on the club/group's growth, changing needs, changing wildlife regulations, or changes you need. Some examples of items that need to be considered when drafting bylaws are as follows:

- ✓ Guest privileges and/or regulations.
- ✓ Safety for members, for the landowners, and/or property.
- ✓ Land management and stewardship of the property.
- ✓ Appropriate disciplinary procedures for all members and guests, if allowed.
- ✓ Rules of the hunt for all participants.
- ✓ Strict adherence to all state and federal wildlife regulations.
- ✓ Functional/operational committees, such as camp operation and maintenance, stand or blind placement and maintenance, food and cooks for organized hunts, and such.
- ✓ Maintenance of appropriate member and landowner(s) relations.
- ✓ If management for quality deer management is a club/group objective, this needs to be made clear in the bylaws.
- ✓ Any club/group self-imposed management requirements, such as no dogs, use of trailing dogs for retrieving cripples, or for chasing deer. Also consider if other species are allowed to be hunted during regulated seasons, such as turkey, squirrels, raccoons, waterfowl and such, and doves.

Obviously hunting club/group bylaws are essential for many organized hunting operations, and if you have concerns about the legality of the bylaws and their enforcement, you may consult a lawyer. Clearly one of the most important considerations must be that all members and invited guests must understand and agree in writing to the adopted bylaws for them to be useful and effective. The items listed above for consideration are not all you need to consider. The list can be expanded based on the desires and needs of you and the membership.

LIABILITY INSURANCE FOR LANDOWNERS AND HUNTING CLUBS

Insurance is a contract where an insurer (insurance company) undertakes to protect the insured (person purchasing the insurance) against loss, damage, or liability from an unknown or possible event. The insured pays the insurer a premium for this coverage.

Liability insurance covers loss because of negligence. It does not cover loss because of an intentional act. You can greatly reduce negligence on most private lands through risk planning.

Liability insurance companies generally limit the total liability of the insurance company to a certain amount, which may be much less than the insured person may suffer. Therefore, liability insurance may not completely eliminate the loss that occurs, but it does reduce the risk of loss.

If you already have liability insurance on your property, you may be able to work with your insurer to add liability coverage for a hunting lease. Your insurer may require that the hunting club or lessees get liability insurance as part of the written lease agreement. You may want to prepare or have an attorney prepare a hunting club disclaimer that all hunting club members or lessees must sign that points out potential risks on the land. Some of these might be an abandoned well, livestock that may need to be avoided, and such. Disclaimers may not be legal, but they do serve to warn lessees of potential risks and may prevent a liability suit if the lessees ignore the identified risks they signed a waiver for.

Many insurance companies offer liability for hunting clubs or for landowners who lease their land for hunting or other recreational access. **The following list by no means includes all sources of information, but it does provide some sources of information about liability insurance, coverage, costs, and comparisons.** Another source you should not overlook is a rider to existing policies to cover recreational access including hunting.

If someone pays for access to your land to hunt or fish or other recreational use, you owe that person certain duties of care, such as posting warnings as to dangerous conditions on the property, including potentially dangerous animals, abandoned wells, old buildings, and other structures. You may be liable for injuries to a hunter caused by another hunter if not you are not covered by insurance. For example, liability may be based on your negligence if you allow too many hunters in a given area, or if you admit an intoxicated hunter who injures another hunter.

■ *Some Known Sources of Liability Insurance*

Southeastern Wildlife Federation's Hunting Club Liability Insurance Program

Contact – Ms. Carol Cash Turner, Insurance Agent, Southeastern Wildlife Federation, P.O. Box 1109, Montgomery, Alabama 36102. Telephone: (334) 832-9453. Premium rates are based on the number of members in the club and the limit of liability selected. SWF offers liability limits of \$300,000, \$500,000 and \$1,000,000 in either Limited or Broad form. The Limited form excludes occurrences between members and/or guests. The Broad form also has \$25,000 Fire Legal Timber coverage. Both forms include a \$25,000 Accidental Death benefit and a \$1,000 medical Expense benefit for each member. There are no hidden charges, and as many as four landowners may be listed as “Additional Insured” at no extra cost. For any landowners over four, the cost per landowner is \$10 plus tax.

Davis-Garvin-Agency

Contact – Dr. Ed Wilson, Account Executive, P.O. Box 21627, Columbia, South Carolina 29221-9961. Telephone: (800) 845-3163, or (803) 732-0060. This agency provides two types of hunting lease liability packages: (1) for an individual hunting club; or (2) for a landowner with a large acreage or groups of landowners representing large acreages. The premium for hunting clubs is determined by the number of members and

guests, with the minimum premium being \$364 for a \$1 million per occurrence liability limit. The premium for large properties or groups of landowners is determined by the acreage involved, with the minimum acreage being 10,000 acres. The rate for a \$1 million per occurrence liability limit varies from 24¢ per acre plus tax for 10,000 to 49,000 acres to 17¢ per acre plus tax for 50,000 + acres.

Bramlett Agency

1000 Energy Center, Suite 104, P.O. Box 369, Ardmore, Oklahoma 73042, (405) 223-7300. This company sells liability insurance for most types of hunting leases.

ISERA (International Special Event and Recreation Association)

Contact – Jim Quist, Underwriting Specialist, 8722 South Harrison Street, Sandy, Utah 84070. Telephone (toll free): (877) 678-7342 or (801)-304-3735. This company insures primarily shooting preserves and shooting ranges.

Worldwide Outfitters and Guide Association, Outfitters and Guides Underwriters Inc.

Contact – Jim Quist, 8722 South Harrison Street, Sandy, Utah 84070. Telephone (toll free): (877) 678-7342 or (801) 304-3735. This company insures primarily guides and outfitters for a variety of outdoor recreation activities, including hunting and fishing.

Outdoor Underwriters, Inc.

Contact – R. Tim Reed, CLU, Outdoor Recreation Insurance, P.O. Box 431, Wheeling, West Virginia 26003. Telephone: (800) 738-1300. This company is affiliated with the Philadelphia Insurance Companies and insures guides, outfitters, hunting clubs, and landowners with hunting leases for up to \$1,000,000 per occurrence.

These are just some examples. Many other insurers may offer such insurance, including your present property insurer through an additional rider. However, the above contacts provide the opportunity to contact these insurers and compare coverage and costs.

For more information, these publications are available from your county Extension office:

P2308 – Natural Resource Enterprises – Wildlife and Recreation, A Checklist of Considerations

P2310 – Natural Resource Enterprises – Wildlife and Recreation, Hunting Leases

SRAC #479a – Fee Fishing: An Introduction

SRAC #480 – Fee Fishing Ponds: Management of Food Fish and Water Quality

SRAC #481 – Development and Management of Fishing Leases

SRAC #482 – Fee Fishing: Location, Site Development, and Other Considerations

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By James E. Miller, Outreach/Research Scientist, Extension Wildlife and Fisheries

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