

HUNTING LEASE LIABILITY:

LIMITING EXPOSURES

By Ed Wilson, Ph.D.

Private landowners in the south have a long tradition of leasing their land to hunting clubs. Land leasing permitted clubs to gain some control of their hunting grounds and landowners derived annual income and improved their property's security. The demand for quality hunting experiences continues to grow and lease operations are expanding across the U.S.

Although the total number of hunting licenses is not growing at a very fast pace, hunters' willingness to pay private landowners for the right to hunt on their lands is taking a sharp increase. The move to quality deer management, the formation of wildlife cooperatives for deer management and hunters' concern for safety have all fueled an increase in demand for hunting leased land.

One major Southern land management firm, with both corporate and private clients, reports that its clients' per-acre hunting lease revenues have nearly tripled since the 1990's, even as the total acreage offered for hunting continues to grow. Landowners are willing to invest in their land to foster improved habitat and, in consequence, are able to demand still higher hunt club rents. And it's common knowledge that industrial landowners increasingly view hunt club revenues as more than a peripheral profit stream. Integrating fiber goals with quality wildlife management is part of today's amalgam for making industrial land assets perform.

Timberland Liability

But a landowner who decides to offer hunting leases will find that his or her liability exposure changes. In 1995, Steve Hill and Ron Kaiser of Texas A&M University conducted a nationwide assessment of rural landowners' liability and found that, while the legal threat to landowners is probably exaggerated, landowners could do a lot more to become familiar with their specific state laws and should be taking steps to incorporate safety and risk management principles into their operating plans.

Any landowner incurs some risk whenever someone is on his or her property. Common law principles provide the legal parameters associated with the rights and duties of landowners. Any landowner has some responsibility to inspect the property, remove hidden dangers and warn the public about dangers that cannot be removed.

Most states provide additional protection to landowners who offer recreational benefits to the public, stipulated under the respective state's recreational use statute. Under a recreational use statute, the landowner owes no duty of care to keep the premises safe for entry for use by persons who have sought and obtained permission to use the land for recreational purposes or to give any warnings of dangerous conditions. Of course, the liability from this statute is not limited if the landowner has committed willful or gross negligence, and - quite central to hunting lease liability - its protection disappears if the land-

owner charges a fee for access (although a few states have broadened this protection and allow collection of small amounts of lease revenue without eliminating the additional protection afforded under this statute).

Hunting Club Exposure

It should be noted, in any case, that in the broad picture, hunting continues to be a safe activity. The National Safety Council reports that hunting had only 7 injuries per 100,000 participants. However, serious accidents do occur.

At Outdoor Underwriters, our team has been in the business of insuring timberland and hunting clubs for over 22 years. During this period, over 40 percent of total claim settlements were for accidental shootings. Other areas of concern include tree stand incidents, all-terrain vehicle mishaps, and unattended fires.

Claim incidents reported over the last 10 years were:

- Tree stand incidents (30 percent)
- Shootings (17 percent)
- ATV accidents (15 percent)
- Fires (13 percent)
- Other (25 percent)

Many of these accidents could be reduced or eliminated by checking club tree stands and developing club rules that control activities on the property.

Risk Management Techniques

Here are some risk management activities that hunting clubs and landowners can employ to limit their exposure to accidental injuries.

Hunt Management: Clubs, at the minimum, should hold an annual safety meeting prior to the start of the hunting season to discuss specific club rules and safety procedures. This would also be a good time for the club to review its lease and incorporate any specific lease requirements into the club's procedures. A sign-in/sign-out map for hunting stand selection should be established. Stand locations should be determined with some attention to hunter density, safety zones and distance between hunters. It is also a good idea to assign a hunt master for high-density hunter days such as Saturdays and any day during opening week, empowered to control stand placement and hunting guests.

Tree Stand Safety: All tree stands should be inspected prior to the hunting season and each member should sign-off on the condition of his or her own stands. All ladder and climbing stands should have harnesses available; capable of protecting the hunter should the stand fail or the hunter fall. Ladder stands should be checked for any loosening of the strap holding the stand to the tree. Rails and steps should also be checked to be sure no wood is rotten and that screws and nails are secure. A safety strap can be secured around the stand and tree to provide additional security in the event the original belt fails. Finally, a rope should be placed along the stand to lower and raise guns and other equipment to the sitting height.

Before the start of the season, raised platforms should be checked to see if any weakening or shifting of the support pillars has occurred, and steps and support railings should also be inspected. It is important to check the floor of the platform and to see that ladder ropes or railings are secured.

Check-in Station: All leased tracts should have a check-in station available that details stand sites and selection. Additional information to be located at the station includes:

- Emergency contact numbers;
- Local fire department number;
- Local emergency or ambulance service number;
- Landowner's name and contact person;
- Site location and direction to the site to be used to direct emergency response to the site;
- Hunting procedures and club rules;
- Map detailing stand sites and stand selection procedures.

Safety During Dog/Man Drives: During hunts in which dog drives man or man drives are conducted, it is very important that there is a sufficient distance between shooters. Hunters should be required to maintain the stand site until the drive is finished. Drivers should have safety vest and hats that are clearly visible.

Controlling ATV Use: Require that ATVs be used with caution and only in areas in which it is safe to use them. ATV use should be limited to established roadways and trails, and they should not be used in heavily wooded areas.

Reducing Risks from Camping and Fires: Many leases contain specific requirements for campfires and burn barrels. A club should have a safe fire spot and have some elementary firefighting equipment available (fire rakes and shovels). There should be specific rules governing campfires and the burning of litter (along with a requirement that all trash bottles and cans be disposed of properly).

If the area has a permanent camp set up, have the area inspected prior to the start of the season for any electrical or heating system defects, and building defects, that may need to be corrected. Check smoke alarms and carbon monoxide detectors. Document all inspections in writing.

Gates and Other Hazards: Gates and hazards should be clearly marked and posted. If cable is used to make a gate, it should be posted and clearly marked, and hazard-marking screen should be used. Gates and gate poles should be marked with reflective tape for all-direction visibility. Brush and trees should be cleared away from the gate, so that it is clearly visible from the road.

Any known hazards should also be marked, and all hunting club members should be made aware of any logging or construction activity. Public roads running through the lease should be posted, and club members should be aware that the public might use the road.

Conclusion

While liability concerns about leasing land are valid, they should not limit property access or recreational use; the reality is that lawsuits filed against landowners are infrequent. However, landowners and hunting clubs will find it is a smart move to employ several simple techniques to limit their exposure to law suits and still provide ample recreational opportunities. While hunting remains a safe outdoor activity, it is very important that gun safety and hunt management be integrated into the hunting club practices. If you have specific or unique ways that your hunting club or ownership uses to promote hunting club safety, please contact the author at ewilson@outdoorund.com.

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