

REAL PROPERTY: Leasing Land For Hunting and Other Recreational Uses

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Purpose

The purpose of this publication is to provide rural landowners with information on some key factors to consider before leasing land for hunting, fishing, and other recreational uses. This is not intended to be a legal format for a lease of land for hunting, fishing, or other recreational purposes. Each piece of property is different and each owner's situation is different. It is recommended that the landowner contact an attorney for legal advice when dealing with this issue.

Introduction

There has been an increase in the number of "NO TRESPASSING" signs placed on rural property in West Virginia. The reasons for landowners posting property are many and varied. Some of the important reasons given for landowners posting lands are:

- they want to restrict the total number of hunters and select among would-be users, including the refusing of access to anyone but family members, relatives, and close friends;
- they fear damage to fences, buildings, livestock, or other property items, injuries to themselves or other persons, and personal liability;
- they have actually suffered damages to livestock, fences, trees, and other property items.;
- they want to increase the supply of game on their lands;
- they have leased lands to hunting clubs who, in turn, posted the property;
- they are retaliating against other landowners who post; and
- they simply prefer to restrict public access to their lands.

Because of the increased posting of land, hunters, fishermen and other recreational users have found themselves welcome in fewer and fewer places. This has resulted in increasingly greater demand by sportsmen on the remaining open private lands and public lands.

Increased *cost of production* of owning land, such as fencing and property taxes, has motivated some landowners to explore alternative means of reducing expenses and/or increasing income. Although not without problems, some rural landowners in West Virginia are discovering the benefits of leasing property to hunters and other sportsmen for outdoor recreational uses.

The amount of income realized by landowners from leasing land for hunting and other outdoor recreational uses is a function of a number of factors. Among them are total acreage leased, the amount of game on the premises, its location, the level of management, and the goals of the owner. The reasons for leasing land vary; one frequently hears such comments as "I'm only interested in making enough money to pay my taxes," or "I only want to handle a certain number of sportsmen," or "I would prefer to be more selective with whom I lease my lands." From a public viewpoint, leasing increases the total amount of land available for hunting, fishing, and other outdoor recreational uses, thereby reducing pressures on both public lands and open private lands.

Landowners considering leasing land should be aware of certain costs in this type of enterprise activity. A major cost results from the possibility of landowners being held liable for damages incurred by those using their land. Landowners can take several steps to reduce liability. Among these are:

- being certain that the property is legally posted,
- taking steps to remove and/or prevent hazardous conditions,
- obtaining adequate liability insurance,
- knowing the people who lease the land, and
- Obtaining legal advice from an attorney before leasing.

Landowners who are considering leasing land understandably have many questions and concerns. Many of these questions involve legal matters: "What are the liabilities of the landowner in a lease arrangement?" "What are the procedures for posting property?" "What provisions should be included in a hunting or fishing lease?" "How can a group of landowners cooperatively lease their adjoining properties?" Many more questions and concerns exist, usually varying with the particular circumstances of the individual landowner. This report considers some of the many legal issues

involved in leasing recreational land. However, this should not be considered legal advice. Landowners should consult an attorney regarding their specific situation and concerns.

This report emphasizes hunting and fishing leases. However, land can be leased for many other recreational uses, including camping, dog training, trapping, and horseback riding. The laws concerning liability and leases are generally the same for different recreational uses.

Ownership of Game And Hunting Rights

There are two legal classifications of animals: domestic animals, those which have become accustomed to domestication by man, and wild animals, those which, because of habit, nature, and instinct, are not usually domesticated. Wild animals include deer, bears, squirrels, rabbits, wild turkeys, ducks, geese, and all other animals generally considered game or wildlife.

Domestic animals are considered personal property, much like a watch, book, or other possession. The owner of a dog or cow is entitled to possession of that animal even if it escapes its yard or pasture. The owner has title to that animal.

Wildlife, on the other hand, generally cannot be owned or possessed by someone until killed or captured. No individual owns live wild animals in the traditional sense of having title or being entitled to possession.

Wild animals in West Virginia are owned by the State, as trustee for its citizens. Wildlife, therefore, is managed by the State for the benefit of all its people. Deer and other wildlife located on a farm or other private land are not the property of the landowner, but rather are property of the people of the State, with state government acting as trustee (Appendix, W.Va. Code § 20-2-3).

Although private landowners do not actually own wildlife found on their property, they do own the exclusive right to hunt on their land. Landowners must, however, adhere to rules and regulations established by the State for the taking of wildlife, including bag limits, seasonal restrictions, and licensing requirements.

Landowners' exclusive right to hunt on their property enables them to control access to their land. Private landowners alone can give permission to hunt or otherwise enter their property. Landowners can sell or lease the right to hunt or fish on their land, much as land can be leased for raising crops or cattle.

Ownership of Fish And Fishing Rights

Ownership of fish is much the same as that of game. The State has title to any fish within its boundaries, as trustee for the people. The only occasion in which there is private ownership of fish is when an enclosed private body of water has no outlets through which fish can escape to public waters. The owner of such a body of water owns the fish therein.

Even though fish in a lake or stream are publicly owned, the right to fish for them does not necessarily extend to the public. Public fishing rights generally depend on two factors: 1) ownership of the land surrounding or bordering the body of water and 2) whether the body of water is navigable.

Generally, the public may fish on any navigable body of water, although they may not trespass on private land in order to gain access to the lake or stream. The State owns the bed of any navigable body of water, and its citizens are permitted to boat, fish, or wade in these waters, subject to the State's right to regulate fishing and boating.

In West Virginia, the property line of a parcel of land bordering on a navigable river or stream extends to the low water mark. This differs from many states where the boundary is the high water mark.

The bed of a non-navigable stream or river is owned by the surrounding property owner. The owner of the land on each bank of the stream owns the bed to the middle of that stream. If landowners own the property on both sides of a non-navigable stream or river, they own the entire stream bed. There is no public right to fish in non-navigable streams or rivers even though the fish in that stream are publicly owned. If the state or federal government owns the land on which a non-navigable stream or river is located, the public can fish that river unless prohibited.

The key to determining when the public may fish in a given stream or river is whether that body of water is navigable. If it is navigable, the public may fish there as long as they do not trespass on adjoining private lands in gaining access to that stream. If the stream is non-navigable, there is no public right to fish.

The definition of a navigable waterway used in West Virginia is "a waterway which in its natural and ordinary condition is susceptible for use as a highway of commerce, upon which trade or travel in its customary modes may be conducted." This would include rivers over which coal is barged and other goods are shipped. Rivers that do not currently support commerce, but which once carried logs or other goods are often still considered navigable. The capability to accommodate pleasure boating may be sufficient to make a river navigable.

In West Virginia, no absolute way of determining whether a river or stream is navigable exists. Landowners who are considering posting land against fishing should consult an attorney with the facts of the particular case.

Regulation of Hunting And Fishing

The State, as owner of fish and game in trust for its citizens, has the duty to manage wildlife for the benefit of all its people. It is this duty that *allows* a state to pass laws and regulations concerning the taking of fish and game. These laws may include bag limits, closed seasons, and licensing requirements. As the wildlife owner, the State can regulate hunting and fishing on private lands. Private landowners may own the exclusive right to hunt on their property but they do not own the wildlife thereon. Thus, all landowners are required to abide by the hunting and fishing laws established by the State.

The federal government also can regulate hunting and fishing under the Commerce Clause of the United States Constitution, which permits federal regulation of goods and services which affect interstate commerce. Using these powers, the federal government has passed laws that affect the taking of wildlife. Examples include the Endangered Species Act, the Bald Eagle Protection Act, and the National Environmental Policy Act.

Landowner Liability

The following discussion deals with landowners' liability toward visitors on their land. Many landowners post property against hunting and fishing solely due to their concerns over being held liable for injuries that occur to sportsmen using the property. However, in West Virginia, the Legislature has given West Virginia property owners statutory protections designed to encourage owners of land to make lands available to the public by limiting the owner's liability. (Appendix, W.Va. Code § 19-25-1 et seq).

The foundations of landowner liability are found in ancient English law. These laws, inherited from England and later modified by statutes and court decisions, comprise our modern body of landowner liability laws. These laws have changed and continue to change. For example, in some court cases, trespassers have been owed almost as much duty of care as invitees.

Classes of Visitors

The liability of landowners regarding a person injured while visiting their property generally depends initially on the class, or status, of the injured visitor. The three generally recognized classes, or status, of visitors to property are trespassers, licensees, and invitees. Landowners owe a certain responsibility to protect a visitor from injury while on their land. These responsibilities are called, in legal terms, the landowner's duty of care or duty toward the visitor. The extent of the duty owed a visitor depends on the visitor's status, with the least duty owed trespassers and the greatest duty owed invitees.

A trespasser is a person who enters private land without the owner's permission. Although the duties owed to a trespasser are usually minimal, a landowner must refrain from intentionally injuring the trespasser. The landowner would be well advised to take reasonable steps to remove hazards and/or prevent injury even though the trespasser is said to *take the property as he finds it*.

Another category of visitor is the licensee. Licensees are persons who enter land with the implied permission of a landowner, but for their own benefit and not for the benefit of the landowner. Salesmen are licensees. Social guests are also licensees in most states. Duties owed a licensee are greater than those owed a trespasser. The landowner must not intentionally injure the licensee. The landowner must either repair hidden dangers on the property or warn the visitor of these dangers.

The final category of visitor, the invitee, is owed the highest duty of care. Invitees are those persons who enter property for the owners' benefit or at their invitation. Shoppers in a store and patrons at a movie theater are invitees. If landowners charge hunters or other users a fee for the use of their land, these recreational users are considered invitees.

Invitees, or any other visitor, cannot be intentionally injured by the landowner. The landowner owes the invitee the duty of inspecting the property to make sure it is not dangerous to enter for the purpose of the invitation. Any danger must be repaired or removed or the visitor warned of its existence.

Landowners who fail to carry out their responsibilities or duty of care are considered negligent under the law if such visitor can show the four requirements for negligence: 1) a duty owed, 2) a breach of such duty, 3) causation, and 4) damages. If a landowner's negligence causes a visitor to be injured, the landowner may be liable for the injuries suffered.

Duties Toward Children

The different duties of care owed to trespassers, licensees, and invitees do not apply when the visitor is a child. A higher duty of care is owed to children regardless of their status as a visitor.

West Virginia has adopted a *dangerous instrumentality* rule for determining the duty owed to children. If a dangerous instrument or condition exists on the property, located in an area where children are known to visit, the owner of the dangerous instrumentality may be liable for injuries it causes to children. The dangerous instrumentality rule is applied even if the child is a trespasser, so posting the property or installing warning signs will not serve to reduce liability.

To reduce the chances of liability under the dangerous instrumentality rule, the landowner should determine if children frequent a particular area of the property. If so, the area should be inspected to determine if any dangerous conditions exist. An example of a dangerous instrument or hazardous condition would be live electric wires near where children swing or climb. Another example is old farm or mill machinery still connected to power sources, which children could turn on, perhaps causing injury. Given children's curiosities, it is easy to see how these conditions could prove dangerous. After inspecting the property, all dangerous or hazardous instruments or conditions found in any area frequented by children should be repaired, removed, or otherwise rendered safe.

Liability to Recreational Users With Free Access

In 1965, the West Virginia Legislature enacted a law that reduced the duty landowners owe to recreational users who are allowed free access to their property (Appendix, W.Va. Code § 19-25-1 et seq). In 1997, the law was modified to also include protections for landowners who allow their property to be used for military training or wildlife propagation. With the reduced duty, the landowner's chances of being liable for injuries that occur to the visitor are similarly reduced. This law was written and passed for the purpose of encouraging West Virginia landowners to open additional land for military training, recreational purposes, and wildlife propagation. (Appendix, W.Va. Code § 19-25-5 for the definition of each of these).

The law states that there are two situations in which the landowner will be liable for injuries that occur to the recreational user:

- if landowners deliberately, willfully, or maliciously inflict injury to persons or property or if they deliberately, willfully, and maliciously fail to warn the recreational user of dangerous or hazardous conditions; or
- if landowners charge the recreational user a fee for the use of the property other than the amount, if any, paid to the owner of the land by the federal government, state government, county government, or any agency thereof.

Although West Virginia law does offer protection against liability to landowners who allow free use of their land, landowners will doubly protect themselves by thoroughly inspecting their property to see if any dangerous conditions exist. If dangers or hazards are found, such as open wells, rotten bridges, or concealed barbed wire, they should either be corrected or warning signs posted at their location. Landowners who keep their property safe will greatly reduce their chances of incurring liability for injuries to visitors.

Liabilities When Users Are Charged a Fee

Many landowners allow recreational use of their land, but impose charges on the user. This may be a large fee, sufficient to provide considerable income to the landowner. On the other hand, the charge may be nominal, sufficient only to cover the costs of removing litter or repairing broken fences. In either case, it is considered a charge under the law, and the provisions discussed above that protect landowners who allow free access do not apply. (Appendix, W.Va. Code § 19-25-4).

West Virginia law indicates that charging may include certain nonmonetary payments from the recreational user to the landowner. Generally, if the landowner receives some benefit from the visitor's presence, a charge has occurred. For example, a farmer who *allows* free access to land for hunting and also runs a roadside produce market, could be found to be charging the hunter since the free hunting access can act as an inducement for the hunter to purchase goods from the produce stand. Similarly, if the recreational user helps to clear a road or erect a shelter, a charge may exist, since the landowner receives some nonmonetary benefit from the visitor's presence, even though money was not paid for the use of the land.

Liability When Landowner Grants a Lease, Easement, or License to the Government

Protection also is provided to a landowner who leases property to a federal, state, county, or municipal government or agency for military training, recreational purposes, or wildlife propagation purposes. (Appendix, W.Va. Code § 19-25-3).

The protection provides that the landowner owes no duty of care to keep the land safe for entry or use by others or to give warning to persons entering or going upon the land about any dangerous or hazardous conditions, uses, structures, or activities. This section is an exception to the general rule which provides that a landowner who charges for the use of land will not receive the benefits and protection of limited liability.

Legally Posted Property

Landowners who decide to deny all access to their land must indicate this by proper posting. For the purpose of convicting an intruder of criminal trespass under West Virginia Law (Appendix, W.Va. Code § 61-3B-1, 61-3B-2, 61-3B-3), lands must be posted by erecting and maintaining signs along the property boundaries at intervals of no more than 500 feet. A sign must also be posted at each corner of the property. Signs must contain the following:

- the words "NO TRESPASSING" in letters at least 2 inches high, and
- the name and address of the property owner or lessee.

Several situations occur under which land is considered legally posted although no "NO TRESPASSING" signs are displayed. Any piece of property less than five acres, on which there is a dwelling, is considered legally posted under the law. In addition, fenced property and cultivated land are considered legally posted. Recreational users, such as hunters, hikers, and fishermen, in addition to landowners, should be aware that in these situations land is legally posted against trespass even though there are no "NO TRESPASSING" signs.

Persons who knowingly and without invitation enter property that is legally posted, or enter after they have been warned against entering, may be guilty of a misdemeanor, with a fine of up to \$100 upon conviction. If a landowner or lessee asks unwelcome visitors to leave and they refuse to do so, or if the offender leaves gates open or otherwise damages the property, the trespasser may be fined between \$100 and \$500 and face possible imprisonment of up to six months (Appendix, W.Va. Code § 20-2-7).

Anyone entering legally posted land will be guilty of a misdemeanor if arrested and convicted. The landowner can ask trespassers to leave but should use care in doing so. If a landowner has concerns about the safety of asking a trespasser to leave, the landowner should contact local law enforcement authorities.

Landowners may wish to allow general access to their land, but prohibit hunting, fishing, or trapping. This can be done by erecting and maintaining signs that say "NO HUNTING," "NO FISHING," or "NO TRAPPING." By law, these signs must be "legibly printed, easily discernible, conspicuously posted, and reasonably spaced" to clearly indicate on what portions of the land these activities are prohibited.

Any person fishing, hunting, or trapping on private land that is legally posted against these activities may be guilty of a misdemeanor. Division of Natural Resources conservation officers can arrest these offenders if requested to do so by the landowner (Appendix, W.Va. Code § 20-2-8).

Written Authorization

Persons hunting, fishing, or trapping on posted private land must carry a written authorization from the landowner indicating that they have been given permission to use the property. A visitor who builds fires, shelters, blinds, or other structures; cuts timber; or performs other activities incidental to hunting, trapping, or fishing also must have written permission.

If a person enters private land to hunt, fish, or trap without permission, and while on such private lands damages gates or fences, injures livestock, or fails to close gates, that person may be found guilty of a misdemeanor and may be liable for damages.

Properly posting property is crucial if the landowner decides not to allow access by the public. It also is important if property owners decide to lease their land to a group of hunters, individuals, a sportsmen's club, or other group for recreational use. Any group paying money for the exclusive use of a property probably will want it posted against trespass. Such a group (the lessee in legal terms) may help erect and maintain the "NO TRESPASSING" signs and may also help patrol the property and eject trespassers. The following section discusses the specifics of leasing land for recreational use.

Leases For Recreational Use

Landowners who have decided to allow recreational use of their land must decide whether they wish to impose charges for the privilege of using the property. Once charges are imposed, landowners expose themselves to greater chances of liability for injuries. However, the landowner can recover some of the costs of maintaining the property in a safe condition and can maintain control over the use of the property.

A lease between the landowner (lessor) and the recreational user (lessee) is perhaps the best way for landowners to control the use of property. Leases of less than one year may be oral, but to prevent disputes, it is recommended that all leases be written. A written lease is required by law if the term of the lease is one year or greater.

One of the most important considerations for landowners to remember when preparing a lease is that they, as lessors and landowners, can control the terms. By controlling the lease, they can control the use of the land. To make sure that all possible sources of dispute are covered in a written lease, landowners, before leasing, should write *how* they wish the property to be used. Do they want hunting to take place only on the bottom land along the stream? Do they want to prevent hunting in the orchard when they are picking apples? It is important to decide on these provisions before a lease is made.

Once landowners have fully considered any and all lease provisions to protect their property interest, they should consult their attorney. Each parcel of property and each situation are different, and the landowners, in concert with an attorney, should develop the lease that best suits their needs and the needs of those who are leasing the property. The attorney can draft the lease incorporating these provisions. Although landowners can prepare the lease themselves, it is recommended that they consult an attorney familiar with property leasing.

The following pages contain some suggested lease provisions. Some are required for a valid lease; others are possible considerations to help landowners decide how to best use property. Not all of these provisions will be applicable in any given situation.

Almost All Leases Will Contain The Following Provisions:

- The **name and address** of the landowner (the lessor) and the party to whom the land is being leased (the lessee). The lessee may be an individual, a group of individuals, a hunting club, sportsmen's association, fishing club, bird watchers' society, or any other recreational group.

- A **statement of the purpose** of the lease. For example: to allow exclusive rights to hunt deer and turkey or to allow the lessee to horseback ride. The purpose can be for one or many activities.
- A **description** of the property being leased. This should include a description of any areas off-limits to the user, including safety zones around barns, buildings, and pastures. Ideally, the lessees will be given a map of the property showing where they may and may not hunt or otherwise use. An actual tour of the property is recommended, not only to point out the boundaries of the leased land but also to show the lessees any hazardous areas of the property.
- The **term** of the lease. A term of one year or greater requires a written lease. The landowner may wish to lease monthly or by hunting season, although a yearly lease is most common.
- The **rent** that the lessee must pay to the landowner and how it is to be paid, such as monthly or by July 1). Penalties for late rent may be included.
- A **damage deposit** to cover any damage the lessee does to the property. This deposit will normally be returned to the lessee if damages do not occur.
- A **provision for canceling** the lease. This would be important if the lessee constantly violates provisions of the lease by littering, leaving gates open, or using off-limits areas of the property.
- Permission, or lack of, to **assign or sublet** the leased rights.
- The **lessee's duties** under the lease. Suggested duties may include such items as closing gates, repairing broken fences, or evicting trespassers.
- The **lessor's duties**. This may include a duty to maintain bridges or roads, keep gates unlocked, or provide other facilities.

Some Leases May Contain the Following Provisions:

- An indemnity clause in the lease can protect landowners from liability if someone is injured on their land. The legal effect of indemnity clauses varies from state to state, but such a clause in a recreational lease generally will be valid in West Virginia. An indemnity clause may require the lessee to pay any liabilities to the lessor resulting from the lessee's presence.
- A limit on the number of guests the lessee may bring onto the property at any one time. The landowner should consider the size of the property, access, parking, and amount of wildlife when deciding how many visitors to allow.
- Landowners may want to reserve the right to hunt on the land or, perhaps, to allow their family and guests to hunt.
- The landowner may want to limit the numbers of a particular species that may be killed, in accordance with proper wildlife management.
- A provision may be in the lease indicating that the lessees are responsible for any damages caused by their presence on the property. This may include broken fences, litter, or injured livestock. Penalties may be monetary or repair and replacement may be required.
- A provision for renewing the lease could be included, assuming both parties are satisfied with the relationship.
- The lease may state which party is responsible for posting the property and patrolling to prevent trespassers. Preventing trespassers can be a joint effort with the landowner responsible during those times when the lessee is not on the property.
- Landowners may wish to restrict the cutting of timber on their land. Some lessees will assume a lease gives them the right to remove timber for home use. If this is not intended, it should be placed in the lease.
- A limit on the number of campers or recreational vehicles may be desired. The landowner may want to prevent overnight camping altogether, restricting the use of the land to daytime use only.
- Is the lessee permitted to build shelters or cabins for overnight stays? If so, the lease should identify which party is responsible for maintenance.

- The landowner may want to restrict the use of 4-wheel drive vehicles or limit their use to existing roads.
- Does the landowner intend to allow target practice and sighting-in of firearms on the land?
- The landowner may want to prohibit the use of dogs or to restrict their use to certain times and areas.
- Landowners may want the lessees to provide proof of liability insurance. This might further protect the landlord if a guest of the lessee is injured while on the land.
- The landlord may want provisions for allowing termination of the lease if the lessee violates state hunting or fishing laws.
- It is helpful to include a property map in the lease, showing boundaries, safety zones, and other areas off limits to the lessee. Also, the map can specifically identify any known hazards or dangers.
- In order to know when others are using the property, landowners may wish to require all users to check-in and check-out at the landowners' house, or perhaps notify them by writing or phoning prior to entering the property.
- The landowner may want to require hunters or fishermen to report numbers, sizes, and locations of all game taken to help provide better wildlife management.
- Proper game management will also be an important consideration in the long-term success of a land leasing program. Over- or under-harvesting of game will reduce the quality of the hunting experience. Landowners may want to include in the lease a provision allowing them to take certain actions in the interest of proper game management, including setting bag limits, reducing a season, or requiring that a certain number of does be harvested.
- A landowner who has found a responsible and conscientious lessee may want to provide for automatic lease renewal. If lessees know they will have access to the land for a number of years, they may be more willing to provide long-term improvements such as cabins, bridges, and roads. As each party grows comfortable with the other and the lessee grows familiar with the land, the overall quality of the experience may be enhanced.
- Even with a thorough lease, disputes can arise. Many leases provide for the arbitration of disputes, with neutral observers (arbiters) serving to judge any disagreements or misinterpretations. Potential arbiters could be local attorneys, game wardens, county agents, or other landowners.
- Landowners may want to consider the effect of a recreational lease on their ability to sell the land should they choose to do so. The lease can provide that the lease terminates on the sale of the property. Prior notification to the lessee of an impending sale would be thoughtful, allowing the lessee to make other arrangements.
- Similarly, the lease can provide that if the lessor dies during its term, the lease either is, or is not, binding on the heirs.

Pooling of Land

Many tracts of land in West Virginia may not be large enough to attract enough recreational users to provide sufficient lease income. However, owners of adjacent properties may combine land to form a parcel large enough and with adequate game populations to attract individuals, a hunting club, or sportsmen's association. In these instances, landowners may consider pooling properties and combining them under a single lease. This can increase the income to all the landowners.

There are many ways to go about pooling small tracts of land to form a larger parcel. Landowners can incorporate for the purpose of leasing hunting property, or perhaps a partnership would best suit the interests of the individual owners. However, pooling can greatly increase the complexity of the lease. For instance, landowners may not want to be liable for the conditions occurring on the property of others in the pool. Similarly, there are tax considerations in forming a partnership or corporation. It is important that a landowner considering pooling with other owners consult an attorney and/or accountant.

Licensing Recreational Users

The landowner may want to consider licensing the recreational user rather than granting a lease. Whereas a lease extends to the lessee an actual interest in the property, a license is merely a contractual right to use the property. The legal rights of a licensee are considerably less than those of a lessee.

Generally, a license is revocable at the will of the licensor (the landowner) for any reason. If, however, the licensee has paid money for the license or expended time and labor in improving the property, the license may be considered irrevocable. The landowner who ejects an irrevocable licensee will be liable for any damages caused.

One may want to consider the following provisions in a typical license:

- names of the parties,
- addresses of the parties,
- the cost of the license,
- the intent of the landowner licensor to grant a license for recreational use of the land,
- any restrictions on the use of the land,
- grounds for revoking the license and the method for terminating the license, and
- the effective date and termination date of the license.

Because a license does not protect the recreational user to the same extent that a lease does, it should be expected that the landowner's income from a license would be considerably less than that from a lease agreement.

Appendix

Citations of Applicable West Virginia Code

OWNERSHIP

20-2-3. State Ownership of Wildlife. The ownership of and title to all wild animals, wild birds, both migratory and resident and all fish, amphibians, and all forms of aquatic life in the State of West Virginia is hereby declared to be in the State, as trustee for the people. No such wildlife shall be taken or hunted in any manner, or at any time, unless the person so taking or hunting the same shall consent that the title thereto shall be and remain in the State of West Virginia for the purpose of regulating the taking, hunting, using and disposing of the same. The taking or hunting of wildlife at any time or in any manner by any person shall be deemed such consent: Provided, however, that all fish, frogs and other aquatic life in privately owned ponds are, and shall remain, the private property of the owner or owners of such privately owned ponds, and that such fish, frogs and other aquatic life in such privately owned ponds may be caught, taken or killed by such owner or owners at any time.

LIMITING LIABILITY OF LANDOWNERS

19-25-1. Purpose. The purpose of this article is to encourage owners of land to make available to the public land and water areas for military training or recreational or wildlife propagation purposes by limiting their liability for injury to persons entering thereon and limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

19-25-2. Limiting Duty of Landowner Generally. Subject to the provisions of section four of this article, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure or activity on such premises to persons entering for such purposes.

Subject to the provisions of section four of this article, an owner of land who either directly or indirectly invites or permits without charge as that term is defined in section five of this article, any person to use such property for recreational or wildlife propagation purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

19-25-3. Limiting Duty of Landowners Who Lease Land to State, Counties, Principalities or Agencies. Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry to use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military training or recreational or wildlife propagation purposes does not by giving a lease, easement or license: (a) Extend any assurance to any person using the land that the premises are safe for any purpose; or (b) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the leased land is an invitee, licensee, trespasser or otherwise.

19-25-4. Application of Article. Nothing herein limits in any way liability which otherwise exists: (a) For details, willful or malicious infliction of injury to person or property; or (b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land other than the amount, if any, paid to the owner of land by the federal government or any agency thereof, the state or any agency thereof, or any county municipality or agency thereof.

Nothing herein creates a duty of care or ground of liability for injury to person or property. Nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational or wildlife propagation purposes to exercise due care in his or her use of such land in his or her activities thereon.

19-25-5. Definitions. Unless the context used clearly requires a different meaning; as used in this article:

- (1) "Charge" means:
 - (A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two [19-25-2] of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;
 - (B) For purposes of limiting liability for military training set forth in section six [§ 19-25-6] of this article, the amount of money asked in return for an invitation to enter or go upon the land;
- (2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the reality;
- (3) "Noncommercial recreational activity" shall not include any activity for which there is any charge which exceeds fifty dollars per year, per participant;
- (4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;
- (5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical archaeological, scenic or scientific sites or otherwise using land for purposes of the user;
- (6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface-mining activities, as governed by article three [§ 22-3-1 et seq], chapter twenty-two of this code, or from the use of surface in the conduct of underground coal mining as governed by said article, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and
- (7) "Military training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard on active duty in the armed forces of the United States; acting in that capacity.

TRESPASS

61-3B-1. Definitions. As used in this article:

- 1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.
- 2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
- 3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
- 4) "Posted land" is that land upon which reasonably maintained signs are placed not more than five hundred feet apart along and at each corner of the boundaries of the land, upon which signs there appear prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its

nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

- 5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.
- 6) "Fenced land" is that land which has been enclosed by a fence of substantial construction whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.
- 7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.
- 8) "Trespass" under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
 - (a) Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - (b) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.
 - (c) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - (d) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - (e) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

61-3B-2. Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of section one (61-7-1) article seven, chapter sixty-one of this Code, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be confined in the county jail for a period not to exceed twelve months, or both such fine and imprisonment.

61-3B-3. Trespass on Property Other than Structure or Conveyance.

- (a) Any person who knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.
- (b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for a period not to exceed six months, or both such fine and imprisonment.

- (c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of section one (61-7-1), article seven, chapter sixty-one of the Code, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed six months, or fined not more than one hundred dollars, or both such fine and imprisonment.
- (d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage. Provided, that the provisions of this article shall not apply in a labor dispute.

20-2-7. Hunting, Trapping. Or Fishing on Lands of Another; Damages and Compensation. It shall be unlawful for any person to shoot, hunt, fish or trap upon the fences, enclosed or posted grounds or lands of another person or to peel trees or timber, build fires or do any other act or thing thereon in connection with or auxiliary to shooting, hunting, fishing or trapping on such lands without permission in writing from the owner, tenant or agent of such owner, and every person hunting, fishing, shooting or fowling **upon such lands shall have in his possession such written permission when so doing.**

Any person who, for the purpose of, or while hunting, trapping or fishing, shall, without the permission of the owner, tenant or agent of the owner, enter upon the land of another and while thereon shall kill or injure any domestic animal or fowl, or shall cut, destroy or damage any bars, gates or fence, or any part thereof, or shall leave open any bars or gates thereon resulting in damage to the owner or occupant thereof, shall be guilty of a misdemeanor, and in addition shall be liable to the owner or person suffering such damage for all costs and damages resulting therefrom.

It shall be lawful for the owner, lessee, or the person entitled to the possession of such lands, or the agent thereof, to arrest any such person found violating this section and immediately take him before a justice of the peace for trial, and such owner, lessee, person or agent is hereby vested with all the powers and rights of a game protector for such purposes. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

20-2-8. Posting Unenclosed Lands; Hunting, Etc., on Posted Land.

The owner, lessee or other person entitled to possession of unenclosed lands may have erected and maintained signs or placards **legibly printed, easily discernible, conspicuously posted and reasonably spaced**, so as to indicate the territory in which hunting, trapping or fishing is prohibited.

Any person who enters upon the unenclosed lands of another which have been lawfully posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

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