

# Law Bulletin



Law you need to know from OSU Extension's Farm Office

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## The Who, What, When, and Where of Ohio's Recreational User Statute What Landowners Need to Know

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Has someone asked you to let them hunt, fish, hike or snowmobile on your land? If you do let them, will you be liable if they are injured while on your land? Ohio's Recreational User Statute addresses this situation. The statute can shield a landowner from legal liability for someone who is harmed while engaging in a recreational activity on the property. To capitalize on this immunity from liability, landowners must understand who the law protects, what protections the law provides, and when the law applies to a recreational situation. We explain each of these important parts of the law below.

### Who does the statute protect?

The statute applies to owners of nonresidential "premises" in Ohio, and also extends to lessees and occupants of premises. A tenant who is leasing and occupying the premises thus also receives the immunity protection. The statute defines "premises" as privately owned or leased lands, ways, and waters, along with their buildings and structures.

When determining whether a property counts as a "premise" under the recreational user statute, courts focus on the character of the property. They often examine whether a given property involves "the true outdoors" and whether improvements have changed the essential character of the property. The property "need not be completely natural, but its essential character should fit within the intent of the statute." *Miller v. City of Dayton*, 42 Ohio St. 3d 113, 114 (1989). Where the premises meets this definition, the immunity can also extend to man-made hazards on the premises. For example, landowners may still be protected when they leave equipment and materials out in the field, or

when they do not warn of dangers such as holes or new tiling on the premises.

Importantly, the statute excludes residential portions of the property. Different liability rules apply to guests in or around a private home. This distinction reflects the Ohio legislature's intent to encourage landowners to allow access for recreation on private, open property that embodies "the true outdoors."

State and other public entities are also protected under the Recreational User statute by way of an Ohio Supreme Court determination that the state and public entities should be treated the same as private parties.

### What protections does the statute provide?

The statute is an immunity statute, which means that if all the required parts are met in a given situation, the owner, lessee, or occupant of nonresidential premises will be "immune" from liability and legal responsibility. This does not prevent someone from suing, but it provides a defense in the event that a lawsuit is filed.

More specifically, the law states that owners, lessees, or occupants of premises:

- Do not owe any duty to a recreational user to keep the premises safe,
- Do not give any promises or assurances of the premises being safe merely by granting permission,
- Do not assume responsibility or liability for injuries caused by any act of a recreational user.

### When does the law apply to a recreational situation?

The law applies when a "recreational user" is injured on the premises. A recreational user is a person with permission to engage in a recreational activity who did not pay the landowner a fee or some other benefit in exchange for using the property. Note that children can be recreational users.

Recreational activities include:

- Hunting
- Fishing
- Trapping
- Camping
- Hiking
- Swimming
- Operating a snowmobile
- Operating an all-purpose vehicle
- Operating a four-wheel drive motor vehicle
- Engaging in "other recreational pursuits"

Ohio courts have interpreted "other recreational pursuits" to include playing softball, riding horses and motorcycles, swinging, sledding, taking merry-go-round rides, and watching others swim or play baseball.

*No fees or compensation allowed, except lease fees*

The statute is very explicit that charging a fee or other benefit in exchange for permission will make the immunity statute inapplicable. There are only two exceptions. One is if the fee is a lease payment made to the owner by a lessee that is a private person, firm, or organization. The other is if the landowner is the state.

*Permission must be given*

By definition, a recreational user is a person who has permission to engage in a recreational activity. The statute does not specifically require written permission. At least one Ohio court has determined that simply allowing a recreational use, without trying to prevent its use, is sufficient "permission" from a landowner. *Stiner v Dechant*, 114 Ohio App. 3d 209 (9th Dist. 1996). Still, courts may require landowners to prove permission.

*Permission may be limited to certain people*

The immunity applies regardless of "whether or not the premises are kept open for public use and whether or not the owner, lessee, or occupant denies entry to certain individuals." As such, a landowner does not have to keep the land open to anybody in order to keep the immunity.

*Written waivers are not mandatory, but may prove permission*

Given how the statute is written, the immunity will apply whether the landowner gives written or verbal permission, and regardless of whether the recreational user signs a release and waiver of liability. The key is whether or not there was permission, and whether the person entering the land did so as a "recreational user" as described above.

A waiver is not required by the statute. However, because a "recreational user" is by definition a person who has been given permission to engage in a recreational activity, having a signed waiver to prove that permission was granted can be helpful.

*Written permission, and the special case of hunting*

Hunting is a bit of a special case. Ohio law requires hunters to receive written permission from the landowner or the landowner's agent before hunting. Failure to obtain written permission results in the landowner not being liable for injury, death, or loss to person or property that occurs during or incident to the person's hunting without permission.

If anything, this provides the landowner with extra protection because it is in addition to the recreational user statute. When proper permission is given, and no fee is taken, the landowner can be protected by the recreational user statute. When a person hunts on the landowner's property without proper permission, the hunting without permission statute can be used to shield the landowner.

### **Where to find the laws**

- Immunity against recreational users statute
  - Ohio Revised Code § 1533.18
  - *Moss v. ODNR*, 62 Ohio St. 2d 138 (1980).
- Definitions for the Recreational User Statute
  - Ohio Revised Code § 1533.181
  - *Forman v. Kreps*, 2016-Ohio-1604 (7th Dist.).
  - *Miller v. City of Dayton*, 42 Ohio St. 3d 113, 114 (1989).
  - *Pauley v. Circleville*, 137 Ohio St.3d 212, 2013-Ohio-4541.
  - *Stiner v Dechant*, 114 Ohio App. 3d 209 (9th Dist. 1996).
- Written permission required to hunt statute
  - Ohio Revised Code § 1533.17

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