

Law Bulletin



THE OHIO STATE UNIVERSITY

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

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Okay to Play: Ohio Recreational User Statute Limits Liability for Hunters, Snowmobilers, and More

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Have people asked you to allow them to hunt, fish, hike or snowmobile on your land? If you do let them, will you be liable if they're injured while on your land? Ohio's Recreational User Statute addresses this situation. The Ohio legislature enacted the law years ago to encourage owners of non-residential lands such as farm fields and wood lots to allow others to use the lands for recreation. In exchange for the use, the legislature gave landowners immunity from liability for injuries that might occur during such activities. The law also limits the state's liability for harm to people who use public recreational lands.

Typically, a landowner has a legal duty to protect visitors from being injured by dangerous conditions on the property. A landowner could be liable for injuries that result from failing to make the property safe or not warning a visitor of the unsafe property conditions. The Recreational User Statute changes this general rule by stating that an owner, lessee, or occupant of premises in Ohio does not:

- Owe any duty to a recreational user to keep the premises safe,
- Give any promises or assurances of the premises being safe merely by granting permission,
- Or assume responsibility or liability for injuries caused by any act of a recreational user.

The statute doesn't prevent an injured person from *trying* to make a landowner liable for the harm. Instead, it provides a legal *defense* of statutory immunity that the landowner can raise in order to dismiss a claim and prevent liability. To qualify for this immunity however, a landowner must meet and prove each of the statute's requirements.

There are four conditions a landowner must meet in order to qualify for immunity under Ohio's Recreational User Statute:

1. The person is engaging in a "recreational pursuit"

The person must be a "recreational user," which means someone who is engaging in the types of recreational activities listed in the statute, which includes:

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

Note the catch-all phrase for "other recreational pursuits," which could encompass non-listed recreational activities that might take place on farmland, such as hunting for archaeological relics, hot air ballooning, sledding, paint balling, and similar activities.

2. The recreational activity takes place on "non-residential premises."

The Recreational User Statute applies only to "non-residential premises," and it's important to understand what types of property the term includes. The law defines "premises" as non-residential privately owned lands, ways, and waters and non-residential privately owned and state owned lands, ways and waters that are leased to a private party. All buildings and structures on the non-residential lands and waters are included in the definition of premises.

Considering a farm property, the Recreational User Statute would apply to fields, wood lots, waters and structures that are beyond the residential portion of the property, but would not apply in or around the residence. If the landowner has leased the farm to another, the statute continues to apply to the lands, woods, waters and structures that are under lease.

3. The recreational user has “permission” to do the recreational activity on the premises.

The law applies only if the recreational user has permission to be on the premises to engage in the recreational activity. But the law doesn’t state exactly what constitutes “permission” or how to grant permission, and the statute does not require that the permission be in writing. In the case of *Stiner v. Dechant*, an Ohio court determined that standing by and *allowing* a recreational use such as snowmobiling, without trying to prevent the use, is sufficient “permission” from a landowner.

A landowner or lessee of the property must be prepared to prove that he or she granted permission to the recreational user. It would certainly be easier to prove written rather than verbal permission, and most difficult would be to prove that the landowner simply “allowed” the recreational use as above. If the landowner gives verbal permission or grants permission by allowing the use, we recommend documenting the situation. For example, have a witness present, take notes of the date, time and circumstances, take pictures or videos of the situation, or devise similar actions that can prove that the recreational user had permission to be on the property.

4. The landowner does not receive a “fee or consideration” for the recreational activity.

The Recreational User Statute applies only if there is no fee or other consideration given for the recreational activity. The landowner or lessee who charges the recreational user a fee or other type of legal consideration (i.e., payment or benefit) will not receive the law’s liability protection. For example, a farmer who charges admission to fish on the farm or requires a person to provide labor in exchange for fishing will not have immunity under this law if someone is harmed at the lake. Because the farmer is receiving money and other benefits from the recreational activity, the law does not grant the farmer immunity and instead places a higher legal duty on the farmer to keep the person safe.

There is an important exception to the “no fee” requirement: the landowner may accept a lease payment for the recreational use. This exception came about when hunting clubs sought to lease lands for hunting but found that landowners were not willing to accept lease payments and lose the Recreational User’s Statute protection. Hunting interests convinced lawmakers to change the law so that landowners could accept a lease payment. Even though the statute includes this exception, landowners who enter into such leases should reference the statute and clarify in the lease that the Recreational User’s Statute does apply.

Frequently asked questions about the Ohio Recreational User Statute

Should I still use a waiver for recreational uses of my land?

The Recreational User Statute negates the need for a written waiver of liability. Instead, consider using a written permission form that includes the person’s name, the property, the date, a statement of permission to engage in recreational activities, and the language of the Recreational User Statute. Both parties should sign the form.

Do I have to allow anyone and everyone on my property?

No. A landowner may limit recreational users and does not have to keep the land publicly open to everyone in order to receive Recreational User Statute immunity.

Do I still have to give hunters written permission?

Yes. Ohio law requires hunters to receive written permission from a landowner before hunting. Landowners are doubly protected from liability for hunters. If a hunter fails to get written permission, Ohio law states the landowner is not liable for the hunter’s harm. If the hunter does obtain permission, the Recreational User Statute protects the landowner from liability.

How does the law affect recreational trespassers?

The statute can provide liability protection for persistent trespassing situations. For example, a farmer who sees someone regularly riding an ATV across the farm could grant permission to that person and no longer worry about liability if the person would be hurt while on the property. Of course, this is helpful only if the landowner doesn’t mind allowing the ATV rider on the property.

So, I don’t have to worry about safety at all?

Not exactly. You should still worry about ensuring that recreational users aren’t harmed by dangerous conditions on your property that you can control, repair, or warn against. Don’t let the law replace your common safety practices.

Where to find the laws

- Ohio Revised Code § 1533.18—1533.181
- *Stiner v Dechant*, 114 Ohio App. 3d 209 (9th Dist. 1996).
- Permission for hunting: Ohio Revised Code § 1533.17

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