

LANDLORD LIABILITY LAW AS AMENDED 1989

Be it enacted by the General Assembly of Virginia;

1. That # 29.1-509 of the Code of Virginia is amended and reenacted as follows:

#29.1-509 Duty of care and liability for damages of landowners to hunters, fishermen, sightseers, etc.-A. For the purpose of this section;

Fee means any payment or payments of money to a landowner for use of the premises, but *does* not include rentals or similar fees received by a landowner from governmental sources or payments received by a landowner from incidental sales of forest products to an individual for his personal use or any action taken by another to improve the land or access to the land for the purposes set forth in subsection B and C of this section or remedying damage caused by such uses.

Land or premises means real property, whether rural or urban, waters, boats, private ways, natural growth, trees and any building or structure which might be located on such real property, waters, boats, private ways and natural growth.

Landowner means the legal title holder, lessee, occupant or any other person in control of land or premises.

B. A landowner shall owe no *duty* of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, participation in water sports, boating, hiking, rock climbing, sightseeing, hang gliding, skydiving, horseback riding, point-to-point racing, bicycle riding or collecting, gathering, cutting or removing firewood or for any other recreational use. No landowner shall be required to give any warning of hazardous conditions or uses of, *structures on*, or activities on such land or premises to any person entering on the land or premises for such purposes, except as provided in subsection D.

C. Any landowner who gives permission, express or implied, to another person to hunt, fish, launch and retrieve boats, swim, ride, trap, camp, hike, rock climb, hang glide, skydive, sightsee, engage in point-to-point races, or to collect, gather, cut or remove forest products upon land or premises for the personal use of such person, does not hereby:

1. Impliedly or expressly represent that the premises are safe for such purposes; or
2. Constitute the person to whom such permission has been granted an invitee to whom a duty of care is owed; or
3. Assume responsibility for or incur liability for any intentional or negligent acts of such person or any other person, except as provided in subsection D.

D. Nothing contained in this section, except as provided in subsection E, shall limit the liability of a landowner which may otherwise arise or exist by reason of his gross negligence or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. The provisions of this section shall not limit the liability of a landowner which may otherwise arise or exist when the landowner received a fee for giving another person permission to enter upon land to engage in any activity described in subsections B and C of this section.

E. For purposes of this section, whenever any person enters into a lease agreement with agencies of the Commonwealth concerning the use of his land by the public for the purposes enumerated in subsections B and C of this section, the Commonwealth shall be deemed the sole landowner and the lessor shall be immune from liability arising out of such uses. The Commonwealth shall also provide all necessary legal assistance and the costs thereof for any lessor who, by virtue of the provisions of this subsection, shall be immune from liability but is nevertheless named as a party defendant in any such liability suit. Any action against the Commonwealth for negligence arising out of such use shall be subject to the provision of the Virginia Tort Claims Act (#8.01-195.1 et seq.) Any such lease agreement shall be construed to include the provisions of this subsection.

The major changes made by this amendment to the law are:

- "Fee" is used instead of "consideration" and is further defined by the last part of the paragraph beginning "or any action.."
- Real property is defined as "whether rural or urban" in the definition of land. Rock climbing has been added to the list of activities.
- The list of activities has been extended to include "or for any other recreational use."
- Permission in C has been defined as "express or implied"
- Section E is new.
- Delegate Wilson introduced HB 1854 adding E. Delegate MaClanan introduced FIB 1632 The Senate proposed substitute HB 1632 combining the two, which after slight amendment was passed.