



Landowner Liability: To Invite, or Not to Invite

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I once had a client that owned a large tract of land in a rural county in my area. Although he used it for hunting on occasion, he had decided to leave it “as is” and not develop or further build on the property. As I recall, it was a nice wooded tract that included streams and bordered a river. My client had been approached by someone with whom he was acquainted that had inquired about the possibility of having school children, teachers and chaperones come to the land for a science related field trip. Although he loved the idea of his land being used for this purpose, he also was concerned about the potential liability that could arise in the event there was an injury, or worse, during such a field trip. Before referring him to a more qualified attorney in the area of personal injury and liability law, we discussed his potential general liability pursuant to NCGS 38A, Landowner Liability, and NCGS 38B, Trespasser Responsibility. In the current national climate, environmental and conservation issues are much more prominent than before. Although the desire to develop large tracts of real property will continue, there are many landowners that would prefer to conserve their land, and in the process, allow others to enjoy the beauty of the great outdoors. There has been a large increase in the number of Land Conservancy organizations around the country, together with an increase in the amount of land being protected with conservation easements. This article is not meant to touch on these areas, but to briefly cover the basic statutory liability laws regarding landowner liability.

Chapter 38A of the General Statutes, entitled Landowner Liability, was passed with one clear intention. NCGS §38A-1 states that “The purpose of this Chapter is to encourage owners of land to make land and water areas available to the public at no cost for educational and recreational purposes by limiting the liability of the owner to persons entering the land for those purposes.” Although this is great legislation for environmental minded landowners, it is important to note the restrictions to the limitations on liability for said landowners. First, a landowner who directly or indirectly invites or permits any person to use the real property must do so without charging the person for the right to enter the land. NCGS §38A-2(1) defines “charge” as “a price or fee asked for services, entertainment, recreation performed, or products offered for sale on land...” Secondly, the use of the land by the person invited or permitted to use the land can only be for educational (“any activity undertaken as part of a formal or informal educational program, and viewing historical, natural, archeological, or scientific sites”) or recreational (“any activity undertaken for recreation, exercise, education, relaxation, refreshment, diversion, or pleasure or sport, including equestrian recreation...”) purposes. The limitation on liability does not apply in cases where a person is invited or permitted to use the land for a purpose for which the land is regularly used and for which a price or fee is usually charged, even if the price or fee is not used in that instance, or if the purpose of the invitation is to promote a commercial endeavor.

The most important aspect of this Chapter to the landowner is the extent of the limitation on liability in the event of injury or death to a person invited or permitted to use the land. NCGS §38A-4(a) states, in part, that "...an owner of land who either directly or indirectly invites or permits without charge any person to use such land for educational or recreational purposes owes the person the same duty of care that he owes a trespasser, except nothing in this Chapter shall be construed to limit or nullify the doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge." The general rule for the liability to a trespasser is set forth in NCGS §38B-2, which states that "A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser." Although this appears to be a broad limitation on liability for the landowner, there are several exceptions to the general rule set forth in Chapter 38B, including intentional harms, failure to exercise ordinary care not to injure a trespasser who is in a position of peril and harms to trespassing children (less than 14 years of age) caused by artificial conditions. The doctrine of attractive nuisance can also restrict the limitation on liability for the landowner, depending on the types of artificial hazards on the land, if any.

A final piece of the limitation on liability puzzle for the landowner is set forth in NCGS §38A-4(b), which states that "Nothing in this section shall be construed to conflict with or render ineffectual a liability release, indemnification, assumption, or acknowledgment of risk agreement between the landowner and a person who uses the land for educational or recreational purposes." Despite the limitations on liability for landowners set for in Chapter 38A, it is probably unlikely that a landowner would be advised to allow invitees to use the land for educational or recreational purposes without first obtaining some sort of release. It is also unlikely that our children will be allowed to attend the field trip to a student's family land without a release being submitted in advance.

In these times of computers, smart phones and other devices, children, and many adults, are getting out into the great outdoors less and less. On the other side of things, as mentioned above, there are many landowners who are deciding to conserve their real property and allow it to be used by the public for many purposes, especially for educational and recreational purposes. If you have a client who has an interest in sharing land with the public, remember chapters 38A and 38B as a starting point for advice. Although I am not sure what became of my client discussed at the outset, I certainly hope he was able to work out something with the school to enable the children to enjoy his land. It sure beats sitting behind a desk.