

Recreational Land Use Liability

Oklahoma's Statutory Protections

- Oklahoma Limitation of Liability for Farming and Ranching Land Act
 - (2 O.S. §§ 16-71.1 et seq)

- General Recreational Use Statutes
 - (76 O.S. §§ 10.1 et seq)

Oklahoma Limitation of Liability for Farming and Ranching Land Act

- The purpose of the Oklahoma Limitation of Liability for Farming and Ranching Land Act (2 O.S. §§ 16-71.1 et seq) is to encourage owners of farming and ranching lands to make such land available for recreational purposes by limiting their liability to persons entering or using the farm and ranch land and to third persons who may be damaged by the acts or omissions of persons entering upon or using these lands.

Land

- Land that is used for farming, ranching activities and recreational purposes.
- Also includes roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty that is used primarily for farming or ranching activities.

Owner

- Owner means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.
- Owner does not include a tenant, lessee, occupant or person in control of the premises who is engaging in any recreational purpose.
- The Oklahoma Limitation of Liability for Farming and Ranching Land Act only applies to an owner of land who does not charge more than ten dollars (\$10.00) per acre per year for that land used for recreational purposes.

Recreational Purpose

- Recreational purpose includes hunting, fishing, wildlife and ecological viewing or photography, recreational farming and ranching activities, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other similar events and activities, nature study, water skiing, winter sports, jet skiing and viewing or enjoying historical, archaeological, scenic, or scientific sites.

Duty Owed

- Generally, an owner who provides the public with land for recreational purposes that is used primarily for farming or ranching activities owes no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on the land to persons entering or using the land for such purposes.

Owner Protection

- An owner of land that is used primarily for farming or ranching activities, who either directly or indirectly invites or permits any person to enter or use the land for recreational purposes for a fee of less than ten dollars (\$10.00) per year per acre, does not:
 - Extend any assurance that the premises are safe for any purpose;
 - Incur any duty of care toward a person who enters or uses the land; or
 - Assume responsibility or incur liability for any injury to person or property caused by an act or omission of such persons.

Insurance

- The Oklahoma Limitation of Liability for Farming and Ranching Land Act does NOT affect the liability of an insurer or insurance plan in an action under the Insurance Code, or an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

Existing Liabilities

- From the Oklahoma Limitation of Liability for Farming and Ranching Land Act – Nothing in the Act limits in any way any liability that otherwise exists for want of ordinary care or for deliberate, willful, or malicious injury or failure to guard or warn against a dangerous or hazardous condition, use, structure, or activity.

Written Release

- No person who has executed a written release of liability or a waiver to sue may maintain an action against or recover damages from a land owner in contravention of the release or waiver for any personal injury or injury to property. The terms of the executed release or waiver shall be binding upon the person signing the document. The provisions of this subsection shall apply regardless of the amount charged per acre for a recreational activity.
- Does not limit liability for willful or wanton acts of negligence or gross negligence.

Trespassers

- An owner, lessee, or other occupant of agricultural land:
 - Does not owe a duty of care to a trespasser on the land; and
 - Is not liable for any injury to a trespasser, except for willful or wanton acts of negligence or gross negligence by the owner, lessee, or other occupant of the land.

Agricultural land is defined as any real property that is used in production of plants, fruits, wood, or farm ranch animals to be sold off the premises.

Use for a Fee

- Landowner owes no duty of care to keep the land safe for entry or use by others for recreational purposes, or to give warning of a dangerous or hazardous condition. However, if more than ten dollars (\$10.00) per acre per year is charged for recreational use of the land, the Oklahoma Limitation of Liability for Farming and Ranching Land Act does not apply.

What if the land I own is not Farming and Ranching Land?

- Then apply the General Recreational Use Statutes (76 O.S. §§ 10.1 et seq)

General Recreational Use Statutes

- The purpose of the General Recreational Use Statutes is to encourage landowners to make land available to the public for outdoor recreational purposes by limiting their liability to persons entering upon and using such land and to third persons who may be damaged by the acts or omissions of persons going upon these lands.
- The Act uses the same definitions for Land, Owner, and Recreational Purpose as defined in the Oklahoma Limitation of Liability for Farming and Ranching Land Act.

Duty Owed

- An owner who provides the public with land for outdoor recreational purposes owes no duty of care to keep the land safe for entry or use by others, or to give warning to persons entering or using the land of any hazardous conditions, structures, or activities.
- Except as provided in this section, no person is relieved of liability which would exist for want of ordinary care or for deliberate, willful, or malicious injury to persons or property. The provisions shall not create or increase the liability of any person.

Special Note to Farming and Ranching Landowners

- 76 O.S. § 10.1(H) states that none of the sections from 76 O.S. §§ 10.1 et seq shall apply to landowners who primarily own land for farming or ranching activities.

Additional Protection

- Consult your attorney
- Insurance
- Separate entity structure
- Separation of operating and non-operating assets through trusts