

Wyoming's Landowner Liability Act

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Introduction

Wyoming provides vast recreational opportunities ranging from hunting to hiking. While many of these opportunities are available on public lands, private landowners can also provide access to these opportunities. As a way to encourage use of land for recreational activities, the state legislature has enacted laws which limit the liability of landowners for injuries sustained by recreational users while on their land.¹ This article will address when a landowner's liability is limited under the Landowner Liability Act.²

Background

In order for a landowner to be liable for injuries sustained by persons entering their land, the owner must first owe a duty of care to those entering the land. The duty of care owed by the landowner depends upon the classification of the entrant. Under the common law there are three classifications of entrants: invitees, licensees, and trespassers.³ In Wyoming, the distinction between invitees and licensees has been abolished.⁴ Therefore, with the exception of trespassers, landowners owe a duty to those entering their land to act reasonably under the circumstances in maintaining their property in a safe manner.⁵ However, the Landowner Liability Act (Act) effectively creates another class of entrants, the recreational user, and limits the duty owed⁶ as long as they do not charge the user.⁷

When does the statute apply?

A landowner would use this Act as an affirmative defense to a suit brought against them by a recreational user who was injured on their land. To determine whether the Act would apply to their situation, a landowner should first determine if they are the type of landowner covered by the Act.

Owner is defined as "the possessor of a fee interest, a tenant, lessee, including a lessee of state lands, occupant or person in control of the premises."⁸ Land is defined as "land, including state land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty."⁹ The act also applies to landowners who lease land to the state or any subdivision of the state for recreational purposes.¹⁰ During the 2009 session the legislature extended application of this law to landowners who give easements to the state or any subdivision of the state for parking and land access for recreational purposes.¹¹

What is a recreational purpose?

If the landowner fits within the definitions discussed above, the next issue will be whether the land is being used for a recreational purpose. The act defines recreational purpose as including "hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic or scientific sites."¹² Recreational purposes are not limited to those instances however,

and courts have interpreted the definition broadly. The Wyoming Supreme Court has held that equine activities, while not specifically mentioned, are a recreational purpose.¹³

There are limits to what will qualify as a recreational purpose. The activities that are claimed to be recreational should occur on recreational land, as opposed to industrial or residential land.¹⁴ The federal district court in Wyoming held that the Act did not apply when an eleven-year-old boy entered an industrial area near his home to play.¹⁵ The site contained an abandoned pile of coal tailings, which had subsurface fires smoldering, and the boy was burned.¹⁶ The defendants argued that the boy entered the site to hike and play, and therefore under the Act they only had a duty to refrain from willful and malicious conduct.¹⁷ The court rejected the argument because it went against the goal of the act, which is to increase access to recreational areas.¹⁸

How is a landowner protected?

Under the Act, a landowner is protected two ways.¹⁹ First, the Act provides that a landowner does not owe a duty to recreational users to keep the premises safe for their entry or use.²⁰ The landowner also does not have “to give any warning of a dangerous condition, use, structure or activity on the premises.”²¹ Second, the Act provides that a landowner who invites or permits a person to use his or her land for recreational purposes does not extend any assurance that the premises are safe for any purpose, confer a legal status of invitee or licensee, or assume responsibility for any injury to a person or property caused by the recreational user.²²

The landowner will still be liable for the recreational users injuries if he or she willfully or maliciously fails to guard or warn against a dangerous condition, use, structure, or activity.²³

The Act also protects the landowner by providing that a recreational user is liable for any damage they cause to property, livestock, or crops.²⁴

Exceptions

As noted above, a landowner who charges people for using his or her land for recreational purposes is not protected from liability under the Act.²⁵ A landowner is also not protected if he or she willfully or maliciously fails to guard or warn against a dangerous condition, use, structure, or activity.²⁶

Recreational Safety Act

The Landowner Liability Act only applies in premise liability cases, and should not be confused with the Recreational Safety Act.²⁷ This act provides that “any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity.”²⁸ Sport or recreational opportunity does not have as broad of a definition under this act.²⁹

The two acts have little interaction, but a landowner may also be able to use the Recreational Safety Act as a defense if the user’s injury results from an inherent risk of a recreational opportunity as defined under the Recreational Safety Act.³⁰

Summary

As long as a landowner does not charge a recreational user, his or her duty to the recreational user will be limited. The landowner will be protected if he or she does not willfully or maliciously fail to guard or warn against a dangerous condition, use, structure, or activity.

¹ *Holland v. Weyher/Livsey Constructors, Inc.*, 651 F. Supp. 409, 412 (D. Wyo. 1987).

² WYO. STAT. ANN. §§34-19-101--106 (2009).

³ *Clarke v. Beckwith*, 858 P.2d 293, 295 (Wyo. 1993).

⁴ *Id.*

⁵ *Id.* at 296.

⁶ WYO. STAT. ANN. §34-19-102 (2009).

⁷ WYO. STAT. ANN. §34-19-105(a)(ii) (2009).

⁸ WYO. STAT. ANN. §34-19-101(a)(ii) (2009).

⁹ WYO. STAT. ANN. §34-19-101(a)(i) (2009).

¹⁰ WYO. STAT. ANN. §34-19-104(a)(i) (2009).

¹¹ WYO. STAT. ANN. §34-19-104(a)(ii) (2009).

¹² WYO. STAT. ANN. §34-19-101(a)(iii) (2009).

¹³ *Addakai v. Witt*, 2001 WY 85, ¶20, 31 P.3d 70, 74 (Wyo. 2001).

¹⁴ *See, Holland*, 651 F. Supp. at 412.

¹⁵ *Id.*

¹⁶ *Id.* at 411.

¹⁷ *Id.* at 412.

¹⁸ *Id.*

¹⁹ *See* Michael K. Davis, *Landowner Liability Under the Wyoming Recreational Use Statute*, 15 Land & Water L. Rev. 649, 651-52 (1980).

²⁰ WYO. STAT. ANN. §34-19-102.

²¹ *Id.*

²² WYO. STAT. ANN. §34-19-103 (2009).

²³ WYO. STAT. ANN. §34-19-105(a)(i) (2009).

²⁴ WYO. STAT. ANN. §34-19-107 (2009).

²⁵ WYO. STAT. ANN. §34-19-105(a)(ii) (2009).

²⁶ WYO. STAT. ANN. §34-19-105(a)(i).

²⁷ WYO. STAT. ANN. §§1-1-121--123 (2009).

²⁸ WYO. STAT. ANN. §1-1-123 (2009).

²⁹ *Compare* WYO. STAT. ANN. §1-1-122(a)(iii) and WYO. STAT. ANN. §34-19-101(a)(iii).

³⁰ Cathy Hansen, Steve Duerr, *Recreational Injuries & Inherent Risks: Wyoming's Recreational Safety Act*, 28 Land & Water L. Rev. 149, 185 (1993).