How Landlords Can Protect Themselves Legally When Renting Their Land to Outside Groups

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Most property owners and landlords appreciate fully the risks and potential liabilities that can occur when they operate campgrounds, conference centers, and other facilities open to the public on their property. These same owners and landlords, however, often fail to understand that these risks and potential liabilities still exist when they rent or loan their premises to outside groups. The purpose of this article is to provide basic information on how nonprofit property owners and landlords can limit their liability when leasing their properties to others.

As an owner or landlord, your nonprofit owes a general duty of care to visitors to your sites, whether they be guests, campers, or outside rental group members. These persons enjoy the legal status of invitee." An owner must use ordinary care to maintain the premises in a reasonably safe condition for invitees. The duty of ordinary care requires an owner to look for unsafe or dangerous conditions on the premises and either remedy the problem or issue an appropriate warning. This duty attaches to both regular invitees and outside rental groups, unless specific affirmative steps are taken to limit that duty.

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There are a number of ways that a nonprofit owner/landlord can limit its liability when dealing with rental groups. First, many states have "Recreational Use" statutes that limit a landlord's liability for any injuries that may arise if rental groups are not charged for use of the property. *See, e.g.*, VA. CODE. ANN. § 29.1-509 (Repl. Vol. 1997). Most of these statutes are directed to outdoor activities such as hunting, fishing, hiking, boating, etc. Under these statutes, a landowner who does not accept a fee for the use of its land owes no duty of care to keep the land or land or premises safe for use by others. These statutes also eliminate the need to warn of hazardous conditions. Assuming the statute applies, a landowner will be found liable only for gross negligence or a willful or malicious failure to warn about a dangerous condition. Gross negligence and willful and wanton conduct are different from ordinary negligence and proof of such generally requires a showing of aggravated or reckless conduct by an owner/landlord. Check with your legal counsel to see if your state has a "Recreational Use" statute and if it would apply to your situation.

Many nonprofits find it necessary to charge a fee to groups who wish to use their facilities. An owner/landlord can limit, and even eliminate, its responsibility (i.e., liability) towards renters through a well-drafted lease or rental agreement. It is important to consult with an attorney who is familiar with the law of the relevant

jurisdiction when drafting a lease or rental agreement. An attorney can assist in preparing a contract that will clearly delineate each party's responsibilities.

A rental agreement should establish, in clear terms, the duties and responsibilities of the owner/landlord and the rental group. The following items should be considered for inclusion in the standard rental agreement, depending on the circumstances:

- **Maintenance and Upkeep:** While the owner typically remains responsible for any hazardous condition on the property in existence at the time of the lease, the rental agreement can establish who will be responsible for general upkeep such as trash pickup, repairing broken steps, clearing snow and ice, etc.
- **Indemnification Clause:** The agreement should include a provision holding the owner/landlord harmless for any negligent acts or omissions by the rental group during the term of the lease.
- **Instructions on Use of Property and Facilities:** The owner/landlord should provide detailed instructions on how its facilities operate or what to do if problems arise.
- **Limits on Accessible Areas:** If the rental group is only using a portion of the premises, or if certain areas are off-limits, those boundaries should be clearly established in the lease. Then, if a renter strays beyond this area, his status will change from an invitee to a trespasser. Once that occurs, the renter takes the risk of the place as he finds it and the duty of the landowner is greatly reduced.
- **Potential Hazards:** Specific warnings about dangerous or hazardous conditions on the premises should be provided.
- **Delegation of Supervision:** Depending on the situation, the owner/landlord may need to provide its own staff members to assist with supervision. For example, if swimming is available on the premises, additional lifeguards may be required.
- **Alcohol Consumption:** If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the owner/landlord as an additional insured. Finally, the contract should include an acknowledgment by the rental group that no one under the age of 21 will be served alcohol.

Another way for an owner/landlord to limit its liability is to require the rental group to obtain its own liability insurance to provide coverage for accidents resulting in bodily injury or property damage. If the rental group is to provide such insurance, the rental agreement should require that the lessee provide a certificate of such insurance. The rental group's policy should also name the owner/landlord as an additional insured.

Of course, the owner/landlord should also purchase an insurance policy to cover the risks of leasing its land. General liability insurance is commercially available both for outside groups who lease or rent property and for the landowners who lease their land. Landowners should also consider purchasing medical payments coverage, which provides coverage for medical expenses of third parties injured on the premises regardless of fault (subject to policy conditions). The existence of "med pay" coverage often serves as a deterrent to lawsuits.

In some circumstances, an owner/landlord may also use a release or waiver form to eliminate its potential liability. By signing a release or waiver form, an adult participant waives his right to sue and agrees to hold the owner/landlord harmless for any injuries that might occur. Pre-injury releases have been held invalid in many states, however, based on public policy considerations. *See, e.g., Hiatt v. Lake Barcroft Community Ass'n, Inc.*, 244 Va. 191, 418 S.E.2d 894 (1992). Thus, an attorney should be consulted before such a release is used. If a release is permitted, a lawyer can prepare a well-drafted release form that should effectively shield an owner/landlord from liability. Releases or waivers signed by or on behalf of children are generally not enforceable.

After an injury occurs, owners/landlords may still limit their liability by obtaining a post-injury release. Post-injury releases are typically used to obtain an absolute waiver of all present and future claims in exchange for the payment of medical expenses or some other comparable sum. An owner/landlord often may avoid costly litigation by quickly approaching a potential plaintiff who has been injured on its premises with an offer to pay his medical bills. However, talk with your insurance company before extending such an offer.

Despite the use of rental agreements and waivers, there is still the possibility that an owner/landlord will be sued for an injury or accident involving a rental group member. If and when this happens, there are a number of affirmative defenses potentially available. Depending on the nature of the organization that owns the property and the particular state involved, charitable or sovereign immunity may be a defense against a claim of

negligence.

Several defenses available to owners/landlords focus not on the landowner but on the plaintiff and his own conduct. Depending on the law of each state, a plaintiff whose own negligent actions contribute and cause his own injury will either be barred from recovery completely (contributory negligence) or may have his recovery reduced by the amount of his own negligence (comparative negligence). Likewise, a plaintiff who voluntarily exposes himself to a known danger may have “assumed the risk” and be barred from recovery.

Obviously, it is the hope of every owner/landlord that no accidents happen, no one is injured, and no lawsuits are filed. The best way to protect against the possibility of a lawsuit when renting property to an outside group is to get everything in writing. With the assistance of a good attorney, an owner/landlord can obtain a well-drafted rental agreement clearly limiting its exposure. Waivers and release forms may also be used to limit liability. Finally, the procurement of insurance policies, by both the owner/landlord and the rental group, can provide assistance if liability is alleged.

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