

## LANDOWNER LIABILITY

### Acceptance of Risk by the User —

Under Vermont Law (Title 12 V.S.A., Chapter 27, § 1037 “Acceptance of Inherent Risk”) a person who takes part in any sport accepts as a matter of law the dangers that inhere therein insofar as they are obvious and necessary. This means that they cannot successfully sue a landowner for injuries sustained as a result of the risk inherent to the activity when snowmobiling, cross-country skiing, mountain biking or walking.

### Vermont Trail System & Landowner Liability —

The snowmobile trails maintained by the Vermont Association of Snow Travelers are considered part of the Vermont Trail System. Under Vermont Law (Title 10 V.S.A., Chapter 20, § 448 “Landowner Liability”) No public or private owner of land which is part of the Vermont Trail System shall be liable for any property damage or personal injury sustained by any person using these trails unless the public or private owner intentionally inflicts the damage or injury.

### Operation On & Across Private Lands —

Under Vermont Law (Title 23 V.S.A., Chapter 29, § 3206 (d) “Operation on and across Public or Private Lands”) No public or private landowner or their agents shall be liable for any property damage or personal injury sustained by any person operating or riding as a passenger on a snowmobile, or upon a vehicle or other device drawn by a snowmobile upon the public or private landowner’s property, whether or not the public or private landowner has given permission to use the land, unless the public or private landowner charges a cash fee to the

operator or owner of the snowmobile for the use of the property, or unless said damage or injury is intentionally inflicted by the landowner.

### Effect of Posting on Liability —

Posting does not affect liability. The landowner is protected whether or not the land is posted. (See Title 12 V.S.A., Chapter 203 § 5794 (c) inside).

### Effect of Easements on Liability —

Easements do not affect liability. Both the landowner and the party holding the easement are similarly protected, as if there were no easement.

### Additional Protection for the Landowner —

Most standard homeowner’s insurance policies cover legal expenses and damages awarded as a result of a lawsuit. Most policies apply to all land and structures. Check with your agent.

The landowner can also seek “contractual indemnification” (also called “hold harmless agreements”) or become an “additional insured” with the organization or agency using the land. In contractual indemnification, an organization agrees to step into the landowner’s liability shoes and pay the cost of defending a lawsuit and any judgments against the owner. As an additional insured, the landowner is added to the organization or agency’s insurance policy, and thus is covered.

\* NOTE – Landowner Liability increases if a fee is charged for use of the property for recreation, since a “higher level of care” (responsibility) is owed to recreational users.



# Landowner Liability

Club: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone Number: \_\_\_\_\_

VAST Trails Administrator  
(802) 229-0005 • ext. 13

[alexis@vtvast.org](mailto:alexis@vtvast.org)

[www.vtvast.org](http://www.vtvast.org)

The Vermont Association of Snow Travelers, Inc. (VAST) was founded over 30 years ago and is responsible for the organization of the sport of snowmobiling throughout the state of Vermont. VAST is a non-profit, private group that includes over 140 snowmobile clubs statewide with over 35,000 members. Through the cooperation and generosity of over 8,000 landowners statewide, 80% of the established VAST network of corridor snowmobile trails are on private property. Landowner permission is obtained through written permission for snowmobile use only and any other allowable uses as designated by the landowner. Once the permission has been granted by the landowner, the landowner will not be responsible for any liability of having the snowmobile trail located on their property, this includes damage to their property and user injury. VAST is required to carry a minimum liability insurance policy of \$2,000,000 on an annual basis. This policy covers all VAST trail construction and maintenance, volunteers, landowners and groomer operators. The following information has been extracted from the Vermont Statutes Annotated and defines the landowner liability laws.

*Information courtesy of the  
Vermont Statutes Annotated.*

# LIMITATIONS ON LANDOWNER LIABILITY

Vermont Statutes Annotated; Title 12: Court Procedure  
Chapter 203: Limitations on Landowner Liability

## § 5791. Purpose

The purpose of this chapter is to encourage owners to make their land and water available to the public for no consideration for recreational uses by clearly establishing a rule that an owner shall have no greater duty of care to a person who, without consideration, enters or goes upon the owner's land for a recreational use than the owner would have to a trespasser.

## § 5792. Definitions (As used in this chapter)

- (1) "Consideration" means a price, fee or other charge paid to or received by the owner in return for the permission to enter upon or to travel across the owner's land for recreational use. Consideration shall not include:
  - a) compensation paid to or a tax benefit received by the owner for granting a permanent recreational use easement;
  - b) payment or provision for compensation to be paid to the owner for damage cause by recreational use; or
  - c) contributions in services or other consideration paid to the owner to offset or insure against damages sustained by an owner from the recreational use or to compensate the owner for damages from recreational use.
- (2) (A) "Land" means:
  - (i) open and undeveloped land, including paths and trails;
  - (ii) water, including springs, streams, rivers, ponds, lakes and other water courses;
  - (iii) fences; or
  - (iv) structures and fixtures used to enter or go upon land, including bridges and walkways.(B) "Land" does not include:
  - (i) areas developed for commercial recreational uses,
  - (ii) equipment, machinery or personal property, and
  - (iii) structures and fixtures not described in subdivision (2) (A) (iii) or (iv) of this section.
- (3) "Owner" means a person who owns, leases, licenses or otherwise controls ownership or use of land, and any employee or agent of that person.
- (4) "Recreational use" means an activity undertaken for recreational, educational or conservation purposes, and includes hunting, fishing, trapping, guiding, camping, biking, in-line skating, jogging, skiing, swimming, diving, water sports, rock climbing, hang gliding, caving, boating, hiking, riding an animal or a vehicle, picking wild or cultivated plants, picnicking, gleaning, rock collecting, nature study, outdoor sports, visiting or enjoying archeological, scenic, natural, or scientific sites, or other similar activities. "Recreational use" also means any non-commercial activity undertaken without consideration to create, protect, preserve, rehabilitate or maintain the land for recreational uses.

## § 5793. Liability Limited

- (a) Land. An owner shall not be liable for property damage or personal injury sustained by a person who, without consideration, enters or goes upon the owner's land for a recreational use unless the damage or injury is the result of the willful or wanton misconduct of the owner.
- (b) Equipment, fixtures, machinery or personal property.
  - (1) Unless the damage or injury is the result of the willful or wanton misconduct of the owner, an owner shall not be liable for property damage or personal injury sustained by a person who, without consideration and without actual permission of the owner, enters or goes upon the owner's land for a recreational use and proceeds to enter upon or use:
    - a) equipment, machinery or personal property; or
    - b) structures or fixtures not described in subdivision 5792 (2)(A)(iii) or (iv) of this title.
  - (2) Permission to enter or go upon an owner's land shall not, by itself, include permission to enter or go upon structures or to go upon or use equipment, fixtures, machinery or personal property.

## § 5794. Landowner Protection

- a) The fact that an owner has made land available without consideration for recreational uses shall not be construed to:
  - (1) limit the property rights of owners;
  - (2) limit the ability of an owner and a recreational user of the land to enter into agreements for the recreational use of the land to vary or supplement the duties and limitation created in this chapter;
  - (3) support or create any claim or right of eminent domain, adverse possession or other prescriptive right or easement or any other land restriction;
  - (4) alter, modify or supersede the rights and responsibilities under chapters 191, animal control, and 193 domestic pet of wolf-hybrid control, of Title 20; under chapters 29, snowmobiles and 31, all-terrain vehicles, of Title 23; under chapter 23, bicycle routes, of Title 19; and under chapter 20, Vermont trail system, of Title 10;
  - (5) extend any assurance that the land is safe for recreational uses or create any duty on an owner to inspect the land to discover dangerous conditions;
  - (6) relieve a person making recreational use of land from the obligation the person may have in the absence of this chapter to exercise due care for the person's own safety in the recreational use of the land.
    - b) Nothing in this chapter shall create any presumption or inference of permission or consent to enter upon an owner's land for any purpose.
    - c) For the purpose of protecting landowners who make land available for recreational use to members of the public for no consideration pursuant to this chapter, the presence of one or more of the following on land does not by itself preclude the land from being "open and undeveloped"; posting of the land, fences, or agricultural or forestry related structures.

## § 5795. Exceptions

This chapter shall not apply to lands owned by municipality or the state.