

Liability and Legal Issues

Liability Insurance for Landowners and Hunting Clubs (revised 6/8/04)

LIABILITY INSURANCE FOR LANDOWNERS AND HUNTING CLUBS PERCEPTIONS AND REALITY

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LIABILITY INSURANCE:

Insurance is a contract where an insurer (insurance company) undertakes to indemnify the insured (person purchasing the insurance) against loss, damage, or liability arising from an unknown or contingent event. The insured pays the insurer a premium for this coverage. Liability insurance covers loss due to negligence, but not loss due to a willful act, of the insured. Negligence is one of the conditions that through risk planning can be greatly reduced on most private lands. Liability insurance companies generally limit the total liability of the insurance company to a specified sum, which may be much less than the liability incurred by the insured. Therefore, liability insurance may not completely eliminate the loss which the insured incurs, but it does reduce the risk of loss. Many landowners who already have liability insurance on their property can work with their insurer to add a rider as a supplement to their existing policy to cover liability for a hunting lease. Others may require that the hunting club or lessee's obtain liability insurance as a part of the written lease agreement. Many landowners will also prepare or have an attorney prepare for them a hunting club disclaimer that all hunting club members or lessee's must sign that points out potential risks that are found on the land, such as an abandoned well, or livestock that may need to be avoided, etc. Disclaimers may not be legal, but they do serve to warn lessee's of potential risks and may prevent a liability suit if the lessee's ignored the identified risks that they signed a waiver for.

There are a number of insurance companies that offer liability for hunting clubs or for landowners who lease their land for hunting or other recreational access. The following list is by no means exhaustive, however, it does provide some sources of information about liability insurance, coverage, costs, and comparisons. Another source that should not be overlooked is a rider to existing policies to cover recreational access including hunting. A landowner owes anyone paying for access to their lands for hunting or fishing or other recreational use certain duties of care, such as posting warnings as to dangerous conditions on the property, including potentially dangerous animals, abandoned wells, old buildings and other structures. He may be liable for injuries to a hunter caused by another hunter if not covered by insurance. Liability may be based on landowner negligence in allowing too many hunters in a given area, or by admitting an intoxicated hunter who subsequently injures another hunter as some examples.

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**HUNTING CLUBS AND LAND OWNERS:
LIABILITY ISSUES AND HUNTING LEASES**

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I. LIABILITY ISSUES FOR LAND OWNERS AND HUNTING CLUBS: WHAT YOU CAN DO TO PROTECT YOURSELF

A. Introduction

Land owners, have you ever considered what would happen if you allow a group of hunters or a hunting club to use your land and there was an accident? What about hunting club members? Have you ever considered what would happen if a guest fell from a poorly constructed deer stand or a member accidentally shot another? Of course we all hope that these things never happen, but unfortunately they do. So what steps can we take to prevent them from happening, and to minimize the negatives both legally and practically? These materials will take a broad look at some of the liability issues concerning the lease and use of land for recreational purposes for both hunting clubs and land owners as well as measures that can be taken to reduce legal liability for both.

B. Land Owner Issues

Land owners face potential liability when they allow others to use their land for hunting, fishing, hiking, camping, etc. However, the state of Mississippi along with many other states have passed recreational land owner liability statutes that limit the liability of land owners in certain situations.

Pursuant to Section 89-2-23 of the Mississippi Code, landowners who open their land to the public without charging a fee do *not* have a duty of care to keep their land safe for entry or use by others for hunting, fishing, etc. *and* shall *not* be required to give any warning of dangerous conditions to the same. This law also applies to person(s) to whom the land owner gives permission to use the land. Miss Code Ann. §89-2-25. This protection applies in all situations *except* where a land owner willfully or maliciously fails to guard or warn of a dangerous condition; if the land owner was paid any compensations for use of his land other than by the federal, state, or local government; or in a situation where a third party to whom the landowner owed a duty to keep the land safe is injured by acts of person(s) given permission to hunt, fish, etc.

These statutes are applicable to land owners who allow others to use their premises for hunting, fishing, hiking, camping, etc. so long as the person is not willfully, deliberately, or

maliciously injured *or* no fee is charged by the land owner for use of his land, or if notice that the land is open to the public is not published at least once annually in a newspaper in the county where the land is located. Basically, this law will not apply to land owners who have leased their land to a hunting club or others and charge a fee for using his/her land for recreation activities. If landowners do not meet the requirements set forth in these statutes, then they will be subject to potential liability as established by the courts.

Once land owners accept any payment from a club or individual for the use of lease of land they are no longer protected by the limited liability statutes outlined above and become subject to common law levels of liability established by the Courts. There are three (3) status levels recognized in Mississippi and in the majority of states when on the land of another: (1) trespassers, (2) licensees, and (3) invitees. The duty of care a land owner owes to each is determined by how the court classifies the person.

1. Trespassers.

A trespasser is a person who enters another's land without license, invitation, or other right. The duty of care owed to a trespasser is that the land owner may not willfully or wantonly injure the trespasser. Practically, this means that you as the land owner cannot set up booby traps such as spring guns, bear traps or otherwise to injure someone who enters your land without permission. A better option is to post your land and call the proper authorities if you notice people trespassing on your land.

2. Licensees.

A licensee is a person who enters the property of another for his own convenience or pleasure pursuant to the license or implied permission of the owner. The duty of care owed to a licensee is the same as that of a trespasser, to refrain from willfully or wantonly injuring them. The Mississippi Supreme Court has made a simple negligence exception to the duty of care owed to licensees that applies to land owners whose (1) active negligence subjects a licensee to unusual danger (2) when the presence of the licensee is known. This exception does not apply in the case of a licensee who is injured as a result of a condition on the land through passive negligence. This rule of liability is based on the theory that a licensee receives permission to be on the land as a gift, because there is no benefit given by the licensee and the licensee must take the land as he finds it. To be cautious, however the land owner should still warn of or repair known dangerous conditions.

3. Invitees

The final status level is that of an invitee. An invitee is a person who enters the land of another in response to an express or implied invitation of the owner for the mutual benefit of the parties. The duty of care a land owner owes to an invitee is to keep the premises reasonably safe and where unsafe conditions exist, to warn of any known danger not in plain and open view. If the land owner receives any compensation from the hunters or the hunting club, then the land owner will owe the hunter or hunting club a duty to keep the premises reasonably safe and to warn of known hidden dangers.

C. Hunting Club Liability Issues.

Hunting clubs, just like land owners, have their levels of liability and duties determined by the status of the person that is injured; trespasser, licensee, or invitee. For the most part, the majority of hunting club guests fall into categories of either licensees or invitees. What are some typical causes of accidents in hunting clubs? Poor maintenance, the cabin or shanty with the broken steps or rails. The three or four people skinning a deer, each with a sharp knife, and multiple fingers within cutting range. The old homemade bridges you have to cross to get to your favorite stand, that old wooden tree stand with the creaking boards and missing ladder rungs. It only takes a little time to repair these items or exercise a little caution versus being held liable for accidents caused by ill-repair. Other causes of accidents include the mixture of alcohol and guns, the absence or non-enforcement of club rules, and/or failure to abide by the safety laws set out by the state.

What happens in the event that one of your members or guests get hurt on the club's premises, or worse yet, shot during a hunt? Is it not foreseeable that the injured person or his family might ask the club to pay the medical bills, along with compensation for his pain and suffering, especially if the accident or mishap is due to someone else's carelessness or negligence? What if your club is unincorporated and has no insurance? Who pays?

The only sure way to protect against legal liability is to prevent accidents from happening in the first place. It is impossible to overemphasize safety issues in hunting clubs. Safety should be made a top priority, if not *the* top priority in every hunting club. Unfortunately, safety is a topic which many hunters don't want to think about, much less discuss. Many hunters think they are extremely safe and cautious and that they will never be involved in an accident or mishap. But consider the following statistics: there were 71 hunting related accidents in Mississippi

between 1998 and 2000 as reported by the Mississippi Department of Wildlife, Fisheries and Parks (“MDWFP”) in a two year study.¹ Of the 71 incidents, 35 involved accidental shootings of another person while 11 were self-inflicted. The remaining 25 accidents involved the use of tree stands with 8 occurring in 1998-99 and 17 in 1999-00. The MDWFP began tracking tree stand accidents several years ago. In the first reporting year, 19 accidents were reported with causes ranging from poorly secured stands, to steps coming loose, to carelessness like slipping on the steps or falling asleep. From July, 1999 through June, 2000, the MDWFP investigated approximately 23 separate shooting accidents, 8 of which were fatal. That compares to 23 accidents with 4 fatalities from July, 1998 through June, 1999. There were also several fatalities attributed to tree stand accidents over the past year.

With the time for pre-season club meetings and clean-up days upon us, many hunting club members will be more concerned with finding out where the deer are concentrated, where the food plots will be placed and the best place for their tree stands. Please also take time to discuss all rules and go over basic hunting safety. Safety issues should be put on the agendas of our hunting clubs as a top priority.

D. A sampling of lawsuits concerning hunting clubs.

Discussed below are several cases which illustrate the types of issues which have given rise to lawsuits concerning hunting clubs, not just in Mississippi but in other states as well. Ask yourself if things like this could happen at your club?

1. Hall v Booth, 423 So. 2d 184 (Ala. 1982). At issue was the liability of an unincorporated club for the death of a 13 year old boy shot during a deer hunt. The family of the boy sued all the members of the club claiming they failed in their duty to conduct a safe hunt. Two organized hunts were conducted that day, with some members acting as drivers and others as standers on one of the roads in the woods. During the second hunt, one member sent several hunters down a road with instructions to act as drivers. The drivers testified that they were told nobody else would be on the road. When the signal was given to begin the drive, one of the drivers heard a noise, turned and saw movement. He fired twice at what he thought was a deer. Unfortunately, he killed the 13 year old boy. In this case, the court dismissed the claims against all of the members except the shooter, holding that the

¹ It should be noted that the report covers accidents during all hunting seasons, not just deer season and includes figures for both shootings and treestand accidents. A breakdown of the accidents by type of hunting is as follows: Deer-46, Turkey-2, Rabbit-8, Squirrel-4, Duck/Geese-2.

proximate cause was not in the planning of the hunt. “When a hunter fires without identifying his target and shoots another person, that irresponsible act is the proximate cause of injury regardless of some negligence on the part of the victim.” To impose liability for negligence, the “injury must be a natural or probable consequence of the negligent act or omission which an ordinarily prudent person ought reasonably to foresee would result in injury.” Without getting too deeply into the facts, it appears the club members were very lucky to escape liability. What if the organizer of the hunt had said, “Boys, we’ve got to put some meat in the freezer and I don’t care what you shoot.” What if the shooter had been drinking all afternoon yet they let they let him participate in the hunt? Maybe the court would not have been as lenient with the club members.

2. Orsner v. George, 252 Cal. App. 2d 660 (Cal. 1967). Decedent was shot by one of two men who were target practicing during a weekend cleanup visit. The men were shooting pistols at “frogs and mudhens” over a pond which adjoined the clubhouse and accidentally shot a man who was out of sight across the pond working on some farm equipment. Five men were staying at the clubhouse that weekend and all had engaged in some form of target practice at one time or another. All the members of the unincorporated club were sued, some of whom were not even present at the time of the shooting. The court carefully examined the level of participation and encouragement provided by all the defendants. Ultimately, The court found that the non-shooting members encouraged the shooters or participated in the shooting. Fortunately for those not present, the shooting was held not to be a part of the purposes of the club and the shooters were not “acting within the course and scope of their activities as club members.” It was also held that two members who were sued but were not present at the time of the shooting could not have failed to exercise reasonable care “to control” the shooters since they did not even know about the shooting.. However, another member (who was present), was not dismissed since there was triable issue of fact as to whether he failed to exercise reasonable care to control the activities of the shooters. The lesson seems clear that all club members should take an active role in stopping activities which are dangerous, careless or in violation of a club’s rules. Not permitting target practice next to the clubhouse is a very common rule. If you see a member sighting his rifle close to your clubhouse after missing a deer during the morning hunt will you put a stop to it? Many club members don’t want to be perceived as trouble-makers or hard to get along with. But it is important that all club members take an active role in the enforcing rules and safety guidelines. As this case demonstrates, you could be found to be a participant in a negligent activity by going along with the activity or encouraging it.
3. Ermert v. Hartford Insurance Co., 559 So. 2d 467 (La. 1990). During a work day at an unincorporated duck club, one of the members saw a nutria swimming across a canal outside. He quickly began to load his shotgun but while walking through the clubhouse the gun accidentally discharged striking the plaintiff in the foot. The club had club rules years before, but the men had become good friends and were now in “general agreement” on safety matters, adhering to common sense safety guidelines which all hunters should follow, such as no loaded guns in the camp. The plaintiff sued all the members of the club based on the premise that they were all liable for the actions of one of their members, for failing to adhere to any safety rules, and the fact that the shooter was acting

with the tacit approval of the other members. The Louisiana court held that one member is not liable for the actions of another simply because they are both members of an unincorporated association. Instead, members are personally liable only for tortious acts which they individually commit, participate in, authorize, assent to or approve. In this case, the various individuals were again fortunate to avoid liability for the actions of the careless member. This case underscores the need to have adequate rules, enforce them and not to get caught up in a careless activity.

4. Lumbley v. The Ten Point Company, Inc., 556 So. 2d 1026 (Miss. 1989). The wife of a club caretaker was injured when she fell through stairway railing on the premises of an incorporated hunting club. The woman was leaning over a rail to hand something to her husband when the railing gave way, resulting in a fall onto a concrete surface. She suffered broken bones, multiple injuries and a 28-day stay in the hospital. Apparently, there was rotting wood around the nails holding the rail to the posts. This case is important in that it discusses the three types of status one can have upon the land of another, which in turn determines the duty owed by the landowner. One can be a trespasser, licensee or an invitee. An invitee goes upon the premises of another "in answer to the express or implied invitation of the owner or occupant for their mutual advantage." A licensee enters another's land "for his own convenience, pleasure or benefit, pursuant to the license or implied permission of the owner." Members of a hunting club would appear to fit into the category of either an invitee or licensee most often. Property owner owes a licensee a duty to refrain from willfully or wantonly injuring him. A greater duty is owed to a business invitee, that being "the duty to exercise reasonable care not to enter him." In this case, the caretaker's wife was an invitee, there for the benefit of the club. The key legal issue in determining Ten Point's liability was "whether Ten Point knew, or in the exercise of reasonable care, should have known, the defective condition of the rail and that it constituted a danger and hazard to persons using the stairway." Ten Point was able to convince the jury that the rotting was a hidden, latent defect that they could not have discovered in the exercise of reasonable care without dismantling the stairway. A property owner is only liable to an invitee for those hidden or latent defects which are known to the owner in the exercise of reasonable care. A lesson for hunting clubs is to exercise due care to make sure the premises are reasonably safe, to repair obvious and reasonably obvious problems, to place warning signs where you know dangerous conditions exist. Ask yourself what a reasonable person would do about a given situation and proceed accordingly. This does not mean hunting clubs must keep their premises in perfect condition, only reasonable condition. If a deer stand is about to fall out of a tree, fix it or tear it down before it falls with someone in it. If the bridge across the street is about to collapse, either put a warning sign in front of it or repair it.
5. Dumas v. Pike County, 642 F. Supp. 131 (S.D. Miss. 1986). Plaintiff had rented an intertube to float the Bogue Chitto Water Park with his friends. They eventually came to a clay embankment where swimmers obviously jumped or dived into the river on a regular basis. The land was privately owned. The plaintiff dove into the river from the embankment, struck his head on the river bottom and was rendered a quadriplegic. There were no warning signs. The land owner argued that the plaintiff was a trespasser, to whom he owed no duty except to refrain from willfully and wantonly injuring him. Court

pointed out, however, that the law is not so restrictive because the plaintiff's status could rise to that of a licensee. A licensee is a person privileged to enter onto the land of another by virtue of the consent or permission of the owner. Significant in this case, consent to enter land can be expressed by acts other than words. The condition of the land can be an indication of that consent. In this case, for instance, a land owner supposedly knew people used the land but had posted no warning signs. Also, there was a well worn foot path leading up the embankment and two earthen platforms for diving. If his status rose to that of a licensee, then the landowner would not have a duty to keep the land in a "safe" condition, but would have a duty to "disclose and concealed, dangerous conditions on the premises of which the possessor has knowledge, and to exercise reasonable care to see that the licensee is aware of the danger." Under the circumstances, the lower court decided to let the matter proceed to trial against the landowner.

6. Reed v. Employers Mutual Casualty Company, 741 So.2d 1285 (La. 1999)
Reed, a member of the hunting club, was injured when he fell from a movable tree stand that collapsed beneath him. Reed sued the treasurer of the hunting club who installed the stand and his insurance company for negligence in constructing the stand. The hunting club was unincorporated. The member who made the tree stand was found to be at fault for negligence.
7. LaBorde v. Scottsdale Insurance Company, 704 So.2d 247 (La. 1997). A non member guest of a hunting club member was shot and injured by a member of the hunting club who accompanied the guest and his friend. The hunting club was organized as a nonprofit corporation. The guest sued the hunting club to recover for his injuries. The guest and his friend were on their 4-wheeler on their way to pick up the second hunting club member. While approaching the stand to pick up the second member, the member fired his rifle at the 4-wheeler hitting the guest. The second member stated he aimed his gun and thought he was shooting at a hog. The jury found the second member 95% responsible and the hunting club 5% negligent. On appeal, the hunting club was absolved of any liability with the court finding that the hunting club could not have done anything to prevent the shooter from actually taking the shot.

E. Legal Devices to Minimize the Liability.

1. Incorporate

One way to minimize liability exposure is to incorporate your club. A properly organized corporation shields its shareholders or members from personal liability for club activities. If you are a land owner, you may consider creating a limited liability company or other legal entity and transferring the land you intend to lease to it. Incorporating protects the land owner from being directly liable for mishaps. Accordingly, while an injured person may have a cause of action against the club or the entity holding title to the land, he may be precluded from attaching the personal assets of the individual members or land owner. This is a very

important consideration for hunting clubs because many clubs are nothing more than unincorporated associations, groups of hunters who are pooling their money to pay for a hunting lease. Unincorporated associations do not shield their members from personal liability. If you as a land owner or club member decide to incorporate, records will need to be maintained, annual tax returns filed and minutes of meetings kept. Corporate formalities like proper elections of board members and officers should also be followed. The cost of incorporating may be less than you think, and the benefits of reducing liability may far outweigh the organizational costs. More sophisticated clubs may have detailed agreements dealing with transfers of stock, inheritance of stock by family members, buy-sell agreements, etc. Limited liability companies are becoming increasingly common as a choice of entity. Besides liability issues, tax considerations may also play a major role in the proper choice of entity, especially for clubs that own, rather than lease their land. You should always consider the tax implications before conveying land. Many large landowners such as International Paper and Georgia Pacific require hunting clubs to incorporate before they will enter into leases with them.

2. Insurance

Another method to limit financial exposure is to purchase a general liability insurance policy to protect the hunting club or land owner. While many land owners have homeowners' insurance policies already in place, the activities allowed by a lease agreement may not be covered by the general policy. The land owner may need to invest in a rider to the policy or require the hunting club to carry a general liability insurance policy with the land owner named as an additional insured. Regardless of whether the land owner requires the hunting club to carry liability insurance, it is still a good idea for a hunting club to purchase some sort of policy.

Many insurance companies offer policies that are both affordable and offer liability protection to hunting clubs. Additionally, by allocating the premium cost in the annual dues, the per member cost may make the insurance premiums affordable. You should take care to review the exclusions and make sure what types of mishaps are covered. For example, some policies only cover accidents which occur on the land, but not accidents in the physical structures such as the clubhouse or deer stand. Four wheeler accidents may also be excluded. You should be sure that you as an individual fully understand the extent of coverage under the club's policy. If you believe that more coverage is needed, you may consider purchasing an individual policy to protect your individual interest.

In Dartez v. Western World Ins. Co., 569 So. 2d 1089 (La. 1990) a club member was liked by an explosion when he attempted to light an old gas stove in his private camp. One of the knobs was missing on the stove and had apparently been left on releasing gas. Most of the club members had personal camps which they maintained on the club's leased land. An issue arose as to whether the accident was covered by the club's policy. No coverage existed for private camps. The club president claimed he had told the member to include their personal camps on their individual homeowners' policies. Other members, however, testified that they had always understood that their camps were covered by the hunting club policy. The insurance company also argued that it was liable only for the negligent actions of officers, directors and employees of the club, but not the individual members. The lesson is clear that hunting club members should make sure they understand what their club's policy covers. Don't wait until you need the coverage to learn about the policy's exclusions.

3. Waivers

Some land owners require hunting clubs to sign waivers or releases of liability before leasing land to them. Hunting clubs sometimes require their own members and guests to sign waivers of liability before allowing them to hunt. The waiver agreement must be based on offer and acceptance between two parties in equal bargaining position. The waiver must be based on some consideration. This consideration does not have to necessarily be money, the exchange of the right to hunt for agreeing not to sue may be enough. A waiver of rights should be carefully drafted to ensure its legality. Courts sometimes take a dim view of waivers when there is not adequate consideration flowing to the person who is giving up what may be an extremely valuable right. The hunting club should consult an attorney to be sure that their interests are protected.

F. Practical Ways to Minimize Liability.

1. Choose Good Leaders

The most obvious way to avoid liability is to prevent accidents. This starts from the top and flows downward. If the leaders set a tone of carelessness, lawlessness and foolishness, then the standard of conduct will likely be followed by most of the other members. That's also the example the children will pick up from the adults. Consider this the next time the time comes to elect officers. Be sure to pick someone who sets the right tone, commands the respect of the other hunters, hunts ethically and within the game laws, and will not be intimidated when the

time comes to enforce the rules, collect a fine, report a violator to the game warden, suspend or even expel a member. Of course, it is always easy to find someone willing to take on those responsibilities, but the point is that the tone will be set at the top, so choose your leaders carefully.

2. Make Rules not Suggestions.

Decide whether the club is going to have rules or suggestions. Many clubs claim to have rules. You'll find them posted on the bulletin board. Unfortunately, these rules will not do any good if no one will enforce them. Everyone, including the non-officers, should do their part to enforce the club rules. If a rule isn't worth enforcing then it may not be worth having. A good lawyer may use that fact to demonstrate that the club knew a certain type of conduct was unsafe yet everyone just looked the other way.

There is no universal set of rules that apply equally to all clubs. Different clubs have different problems and safety concerns that need to be addressed. Some of the more common rules would include: no drinking during hunting hours; no loaded weapons in the clubhouse or in vehicles; no target shooting on clubhouse premises; hunter orange required to be worn; children no allowed to carry a firearm before completing hunter education course; no shooting of illegal deer; all state and federal game laws to be followed. Other issues which bear consideration by your club may include the age at which children may be on a deer stand unaccompanied by an adult. This can be a tricky issue but bears consideration by your club. Also, does your club have an effective system in place to make sure where everyone is hunting? This can help prevent unexpected encounters in the woods. Many clubs do not allow members to get off their stands at certain times of the day. It may also be a good idea to schedule a short refresher safety course through the Hunter Safety division of the MDWFP. Some clubs require all of their members to take the hunter safety course, regardless of whether they are grandfathered in.

3. Make Safety the Primary Issue.

When your club holds its next cleanup day or organizational meeting, make sure that safety makes it onto the agenda. Discuss any potentially dangerous conditions on the premises which should be repaired. Evaluate your club's rules. Are they sufficient or are new ones needed? Are the club rules being enforced? Are the formalities of the corporation being kept up with if you are an incorporated club? Do you have liability insurance? What exclusions exist in your policy? Have you observed safety problems at your club in the past few years that concern

you? Are illegal deer routinely killed at your club? If so, it may demonstrate one of two things: (1) hunters are not positive about what they are shooting at, or (2) do not respect the game laws. The next time they guess at a target it may be your son waling out of the woods at dark. Don't wait until an accident happens at your club to take a hard look at what your club is doing from a safety standpoint. By making your club as safe as possible you'll have more peace of mind in the woods and possibly avoid a tragic accident. Many tragedies occur every year. Please help yourself, your friends and your children this season. There's not a deer out there big enough to justify losing your son or friend.

II. HUNTING LEASES

WHAT HUNTING CLUBS AND LAND OWNERS SHOULD KNOW

Suppose the person your hunting club has been leasing land from suddenly passes away and his family decides to rent the land to someone else. What can you do to prevent them from renting or selling to someone else? The answer depends on the terms of the lease agreement signed by both parties. In Mississippi as well as most states, leases are required to be in writing or they are not enforceable. So, if you have been renting land for the past few years without a lease agreement in place, then you do not have a binding agreement and could lose your land at a moment's notice. The purpose of this section is to inform both land owners and hunting club members of the basic items that should be considered in any lease agreement and the different types of lease agreements to consider when drafting next year's lease.

A. Types of Leases

There are many different types of leases that can be utilized dependant upon the situation and willingness of the parties. First of all, there are the general lease agreements where the owner typically leases his land for a term of years to one person or club. The land owner may choose to lease part of his land to one club and part to another. The land owner may also choose to allow a person to go on a certain number of hunts over a period of time. Finally, the land owner may decide to seasonally lease the land. For example, a deer club could lease the rights to the land during deer season while a turkey club could lease the same land for turkey hunting. It just depends on the needs of both the club and/or leases and the land owner.

B. Lease Terms

Regardless of the situation, there are key things that should be included in any lease agreement.

1. The lease needs to be in writing to be enforceable.

The agreement between the parties is what every court looks at to determine whether there was an agreement, if it was breached and the damages available to the parties. If there is no writing evidencing an agreement then a dispute may come down to one party's word against another. This is why Mississippi and many other states require lease agreements to be in writing. In Thompson v. Potlatch Corporation, 930 S.W.2d 355 (Ark. 1996), an officer of a hunting club sued a land owner to enforce a verbal contract to hunt on the land owner's land. The club officer claimed that the land owner orally agreed to allow the hunting club to lease the land for hunting

and trapping. The hunting club had sued the land for many years in the past. The land owner decided to begin formally leasing the land to hunting clubs, but required each club to be incorporated and carry liability insurance. The hunting club complied with these and other requirements but was not awarded a hunting lease. The hunting club sued the land owner for breach of contract. The court found that there was not a written lease agreement between the parties and the land owner did not have to lease its land to the hunting club. The lesson to be learned from this case is to be sure that any type of lease agreement is formalized in writing in order to protect both the rights of the hunting club and land owner.

2. Accurate Description of Land.

The lease should contain an accurate description of the land to be leased. This is to insure a complete understanding by both parties where the boundaries of the land actually are. Descriptions such as “the old Porter farm” may not be sufficient to describe the leased property. If the description is unclear, it may cause the hunting club to wind up trespassing on someone else’s land and poaching deer that club members thought they had the right to take. You should also pay attention to the need for easements. You may need to pass through land you do not have the right to hunt upon. Make sure you can get to and from the leased property.

3. Clearly Identified Parties to the Agreement.

The parties to the lease should be clearly identified. A lease in the name of one of the club members is not the same as a lease in favor of the club. If you are incorporated, include the full name so that the lessor understands he dealing with a corporation. As a lessee be sure all of the persons leasing the land have executed the lease. Otherwise, you will not have a valid lease if the landowners don’t want you there.

4. Price Clearly Set Out.

The amount of the lease should be set out in clear terms so as to avoid confusion of how much is owed and when payment is due. Be clear about when payment is due. Failure to make timely payments may give the lessor the right to terminate the lease.

5. Activities Allowed on the Leased Land.

The lease should set out what activity(s) the club is allowed to conduct on the land. This includes the type of game to be hunted, the amount allowed to be taken and other things such as the allowance of group hunts and the number of members and/or guests allowed on the land at any

given time. Be clear about what is expected by the hunting club in terms of maintenance, closing gates, etc.

6. Term of the Lease

The length of the lease should be set out in clear language. A land owner may be inclined toward a short term lease to allow the land owner to determine what kind of tenant the person or club is going to be. If the club is responsible and takes care of the land, then the land owner may decide to re-lease the land to the club. The club, on the other hand, may want a long-term lease before making a significant investment in game management and physical facilities.

7. Escape Provisions.

The lease should have provisions allowing both land owners and hunting clubs to terminate the lease upon the happening of certain events such as violating the state game laws, upkeep of the property, land owners failure to maintain the roads, etc. Consider what problem would necessitate termination of the lease. What if the land owner cuts all the trees? Would you still want a five (5) year lease of clear-cut property?

8. Ability to Sublease or Transfer.

The lease should set out whether the lease can be transferred or subleased. If the lease can be transferred or subleased, it should set out the terms under which a transfer or sublease will be acceptable to the land owner.

9. Renewal Options and Right of First Refusal.

The lease should state whether the lease can be renewed for additional terms. If so, the terms of the renewal should be clearly stated with provisions for rent increases and other options. A hunting club should try to negotiate the right to match any other offers for the lease of the land to prevent the guy down the street from offering a dollar an acre more to get your club property after the hunting has improved under your management. This is commonly called a “right of first refusal.”

10. Rights of the Land Owner.

If the land owner desires to reserve any rights to hunt on the land, it should be set out in the lease agreement.

11. Liability Insurance and other Liability Shields.

If the owner requires that the hunting club carry a liability insurance policy, the terms and minimum amounts of coverage acceptable to the land owner should be set forth in the lease.

Additionally, the land owner may require the hunting club to name him as an additional insured under the liability policy. The land owner may require that the hunting club agree to indemnify him from any suits resulting from injuries suffered by any hunting club members or guests thereof on leased premises. The land owner may additionally require the hunting club to become incorporated before any lease is executed. It is important to note that Mississippi does not recognize the right of an unincorporated association of individuals to execute legal documents such as leases. So for more and more hunting clubs, incorporating is becoming an increasing reality.

C. Benefits of Leasing Land.

There are benefits for the land owner in leasing his land to a hunting club. The money derived from the lease should pay the property taxes on the land along with a little extra spending money in the land owner's pocket. If the hunting club is a good care taker of the land, then the land owner will not have to worry about upkeep of the land, trespassers and poachers. Having a hunting club on the land may help protect the land from any boundary encroachments, fires, and maintenance of buildings and roads on the property. Land owners should always strive to lease their land to responsible, careful individuals concerned with protecting the land, preserving the wildlife and turning the land into a great hunting area. In the same manner, hunting clubs must respect the land owner and treat the property as if it were their own. Access to far too many lands has been lost already as a result of irresponsible hunters who have aggravated land owners beyond repair.

These materials should not be used as a substitute for professional legal counsel. They are presented for educational purposes, but the specific facts of any given situation will dictate potentially different conclusions.

Insurance Providers List (2006):

Outdoor Insurance Group
Barney Barnhardt
400 N. Woodlawn Suite 5
Wichita, KS 67208
Phone 1-888-683-7808
email insure@oigcorp.com
website: www.oigcorp.com

Gillingham & Associates, Inc.
8501 Turnpike Drive, Suite 200
Westminster, CO 80031
Phone: 303-428-5400
website: www.outdoorinsurance.com

OutdoorsInsurance.com, Inc.
R. TIM REED
P.O. BOX 6336, WHEELING, WV 26003
Phone: 866-695-9040
Home 1-800-552-9925
Email: tim@outdoorsinsurance.com
website: www.outdoorsinsurance.com

K and K Insurance Group Inc.
Ron Norton
PO Box 2338
Fort Wayne IN 46804
Phone: (219) 459-5970
email: ron_norton@kandkinsurance.com
website: www.kandkinsurance.com

Bramlett Agency
1000 Energy Center
P.O.Box 369
Ardmore, Oklahoma 73042
Phone: 1-800-797-3371
Website: www.bramlettagency.com

ISERA (International Special Event and Recreation Association)
Jim Quist
8722 South Harrison Street
Sandy, Utah 84070
Phone: 1-877-678-7342

Southeastern Wildlife Federation's Hunting Club Liability Insurance Program
Contact – Ms. Carol Cash Turner,
Insurance Agent, Southeastern Wildlife Federation
P.O. Box 1109,
Montgomery, Alabama 36102
Telephone: (334) 832-9453

Meadows Insurance Agency Inc.: Steve Meadows
(The Virginia Deer Hunters Association, Inc. offers this plan for hunt clubs only)
304 Turner Road
Richmond, VA 23225
(804) 745-9205
FAX: (804) 272-9083

Davis-Garvin Agency
Dr. Ed Wilson
P.O. Box 21627
Columbia, South Carolina 29221-9961
Phone: 800-845-3163
Website: www.davisgarvin.com

Davis-Garvin Agency
216-C Avalon Circle
Brandon, MS 39047
1-888-501-2960
1-601-992-0227
Fax: 1-601-992-0208
Website: www.davisgarvin.com

Davis-Garvin Agency
2901 HWY 28 East Suite E
Pineville, LA 71360
1-318-619-9484
1-888-594-9484
Fax: 1-318-619-9467
Website: www.davisgarvin.com

**RELEASE OF LIABILITY AND
ACKNOWLEDGMENT AND ACCEPTANCE
OF DANGERS, RISKS AND HAZARDS
OF HUNTING LEASE**

I hereby acknowledge that I have knowingly and willingly entered a Hunting Lease Contract, or become a party bound by the terms of a Hunting Lease Contract by and between _____ (hereinafter the Lessor), and _____ (hereinafter the Lessee) dated _____, 20___. I understand the terms, provisions and conditions of that Hunting Lease Contract and agree to abide by its terms, provisions and conditions.

I further acknowledge and understand that no warranty, either express or implied, is made by the Lessor as to the condition of the hunting lease (hereinafter the leased premises) located in _____ County, Mississippi, or of any roads, buildings, gates or other improvements located thereon. **This document serves to warn me that dangerous conditions, risks and hazards do exist. My presence and activities on the leased premises expose both me and my property to dangerous conditions, risks and hazards, including but not limited to: poisonous snakes, insects and spiders; blinds and tree stands, whether or not erected by Lessor; erosion and general condition of the land, both on and off road ways, creating rough, hazardous and dangerous driving and walking conditions; animals both on or off the leased premises; the use of vehicles; and the implementation of forest management activities including timber harvesting. I acknowledge that hunting is an inherently dangerous activity, and I understand that my participation in hunting can possibly lead to serious bodily injury or death to my person. I hereby state that I am aware of these facts and expressly assume all such dangers, risks and hazards of entering the leased premises.**

In consideration for the right to enter the leased premises, I hereby release and agree to protect, indemnify and hold harmless _____ and his/her respective heirs, agents, employees and assigns from and against any and all claims, demands, causes of action and damages, including attorneys fees, resulting from any accident, incident, or occurrence arising out of, incidental to or in any way resulting from the use of the leased premises and any improvements located thereon, whether or not caused by the Lessor's negligence or gross negligence. This release applies during the time that I am permitted on the leased premises. I hereby further covenant and agree that I, my heirs, successors and assigns will not make any claim or institute any suit or action at law or in equity against the Lessor or his or her respective heirs, agents, representatives, employees, successors or assigns by reason of conditions of the leased premises or activities occurring thereon.

As used in this release, the terms *I, my person* and *myself* include minors in my care while on the leased premises.

Dated and signed this the _____ day of _____, 200__.

IMPORTANT: THIS DOCUMENT IS A RELEASE OF LIABILITY AND AFFECTS YOUR LEGAL RIGHTS. YOU MAY WISH TO CONSULT AN ATTORNEY PRIOR TO SIGNING IT. DO NOT SIGN THIS RELEASE IF YOU DO NOT UNDERSTAND OR DO NOT AGREE WITH ITS TERMS.

IF PARTICIPANT IS UNDER EIGHTEEN (18) YEARS OF AGE, THE SIGNATURE OF A PARENT OR LEGAL GUARDIAN IS REQUIRED IN ADDITION TO PARTICIPANT'S SIGNATURE.

DATE SIGNED

PRINTED NAME

PARENT OR LEGAL GUARDIAN
IF PARTICIPANT IS A MINOR

PARTICIPANT (SIGNATURE)

Participant's Address:

