

Mad River Path ASSOCIATION

LANDOWNER INFORMATION

Landowner Liability Protection

Landowners who choose to make their property available for the Mad River Path enjoy several layers of protection from liability.

Vermont's Landowner Liability Laws

Vermont law and policy strongly favor the protection of landowners from liability in order to encourage them to make their land available for recreational uses by the public. Vermont's laws are among the most protective in the United States for landowners who act in good faith and who do not seek to make a profit from the public's recreational use.

Under Title 12, Chapter 203 of the Vermont Statutes Annotated, ***a landowner is not liable for personal injuries or property damages incurred by users of a recreation path unless either:***

1. *The landowner acts with malice or wanton misconduct.*¹ (“Malice” means the landowner intended to inflict injury²; “wanton misconduct” means the landowner should have known the act is likely to cause injury.³), or
2. *The landowner is paid a fee for the path's use.* (Accepting a tax benefit, payment for a permanent trail easement, or accepting insurance against claims, is **not** a “fee” that exposes the landowner to liability⁴).

Moreover, when making land available for a public path without a fee, landowners have no duty to make the property safe or to inspect for dangers on the land.⁵

An older statute remains in force and further bolsters landowners' insulation from liability. Under 12 V.S.A. §1037, a participant in any sport (including bicycle riding and hiking) is deemed to have accepted the inherent and obvious dangers of the sport. Thus, a participant in such sports cannot recover any compensation for injuries or damage that arises from those accepted risks.

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¹ 12 V.S.A. § 5791.

² *Behr v. Hook*, 173 Vt. 122 (2001).

³ See *Fly Fish Vermont, Inc. v. Chapin Hill Estates, Inc. and Peter J. Fitzpatrick* 2010 VT 33, (Accordingly, we hold that the culpability necessary for an award of punitive damages based on reckless or wanton misconduct requires evidence that the defendant acted, or failed to act, in conscious and deliberate disregard of a known, substantial and intolerable risk of harm to the plaintiff, with the knowledge that the acts or omissions were substantially certain to result in the threatened harm.).

⁴ 12 V.S.A. § 5792 (1).

⁵ 12 V.S.A. § 5794 (A) (5).



Supporting Community, Ecology and Health through Public Pathways.

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Insurance Coverage

Insurance provides additional coverage for landowners who choose to host the Mad River Path.

The Mad River Path Association carries liability coverage of \$1 million per occurrence. Our insurance carrier advises us that our policy covers landowners who host the Path through a trail access easement or other agreement. Accordingly, if an incident were to occur on the Path, our insurance policy will further protect a hosting landowner from liability. Our insurance policy is available for review.

Most standard homeowners' insurance policies provide an added level of protection for landowners who host the Path. These policies often provide coverage for lawsuits that a Path-user might attempt to bring against a landowner. Landowners should check their policies to determine what coverage their specific policy provides.

Easement Extinguishment

Path Association easements contain a paragraph which provides a third level of liability protection for landowners. In the unlikely event the landowner liability law were repealed AND the Path Association ceased carrying liability insurance coverage, any trail easement held by the Path Association will cease to exist.

More Information

For more information about landowner liability, visit our website or contact the Path Association office. Additional information is also available from the Vermont Department of Forests, Parks & Recreation and the Vermont Trail and Greenways Council.

Other Landowner Information Bulletins:

- Trail Access Easements
- Trail Management
- Purchases of Trail Access Easements