

## The Vermont Mountain Bike Association & The Vermont Land Owner Liability Act



Private landowners in Vermont play an important role in providing outdoor recreation to the public. Approximately 85% of all land in the state is privately owned. Most hiking, fishing, hunting, trail use and other valued recreational activities would not be possible without private landowners.

In 1998 Vermont recognized this important dynamic and amended the landowner Liability law to increase landowner protection for allowing recreational users on their land. Once protected, other concerns remain for landowners such as over-use, abuse to the land, noise potential and liability curtails an owner's enthusiasm for allowing public access.

### Synopsis of Landowner Legal Protection

The law can be found in [Vermont Statutes at 12 V.S.A. §5791, et seq.](#) The law was passed in 1998 as a result of the tireless efforts of Conrad Motyka, Vermont's Commissioner of Forests, Parks & Recreation, and with the extensive educational efforts of individual legislators undertaken by the Vermont Mountain Bike Association, the Catamount Trail Association, and the Green Mountain Club. The law incorporates the following:

- State Statute limits liability required by a landowner to that of a trespasser. In essence in order to successfully be sued, a plaintiff would need to prove “willful and wanton misconduct” on the landowner’s part (State v. Parenteau, 153 Vt. 123 (1989)). Legal precedent dictates a person injured while mountain biking would have tremendous difficulty in successfully placing blame on a landowner.
- 12 V.S.A. Section 1037 states: “Recreationists must accept the risks that are natural aspects of the activities in which they engage.”
- 10 V.S.A. Section 448 further protects landowners of he/she are hosting trails for organizations that are part of the “Vermont Trails Network.” VMBA is a VT Trails Network member.
- 19 V.S.A. Section 2309 states: “No landowner shall be liable for any property damage or personal injuries sustained by any person who is using, for any purpose permitted by state law or by a municipal ordinance, bicycle routes constructed on the landowner’s property pursuant to this Chapter unless the landowner charges a fee for the use of the property.”
- To be covered by the law a landowner cannot charge a fee for use.
- Land is defined as “open and undeveloped” and incorporates: posted, fences, agricultural or land with forestry related structures.
- The landowner is not liable for property damage or personal injuries sustained by a person who goes onto land for recreational purposes – unless in the case of “willful

and wanton” action taken by the landowner.

- The law expressly states a landowner making his/her land available for recreation use **free of charge** does not imply the landowner provide any assurances the land is safe.
- Easements do not change exposure to liability.
- Although a landowner has made land available for recreational purposes, he/she is still entitled to enter into agreements for the recreational use of land, which vary or supplement the duties and limitation created by the new law. Thus should an organization wish to gain more formal access they are free to negotiate a fee with the landowner for the use of land. The landowner’s liability, then, would likely be governed by the terms of the agreement.

### **Benefits to Landowners**

- Trails, bridges, culverts and maintenance are often financed through VMBA and our partners.
- The Vermont ethic stays alive and well – others use your land and in turn you use theirs.
- Your property may connect with others’ to create fantastic trail networks.
- VMBA is an opportunity to “give back” to a statewide nonprofit working hard to educate riders on sustainably built trails, which encourages a connection to place for Vermonters.
- Mountain bikers are a grateful and passionate group of people that will protect, maintain trails and help ensure the responsible use of your land. Landowners’ generosity is never taken for granted among VMBA chapters.

### **Mountain Biking Permission from Landowners**

Vermont law permits hunting, fishing, hiking, and mountain biking on private property without permission unless the land is legally posted, (10 V.S.A. Section 5201). This nuance of Vermont law does not apply to VMBA chapters as each will build trails in coordination with your input. VMBA does not support trails constructed without expressed written permission from landowners/managers and that are not sustainably constructed.

Written permission ensures a few important factors for VMBA chapters and landowners:

- Roles and responsibilities are well-understood.
- Your desires as a land owner relative to hunting season are well-understood by riders – VMBA/chapter will “close” the trails out of respect for your wishes
- You know exactly who you can contact in VMBA and in the local chapter in the event you have information/concern to share.
- Together with chapters you can enjoy and open discussion around the dynamics of mapped trails.
- Together with the local chapter you can make it known how you wish vehicular traffic and parking to be handled.

These and other factors should be in writing and also outline the long-range plans for trail development. Copies of this signed document should be sent to a) landowner b) chapter and c) VMBA.

### **VMBA's Responsibility to Landowners**

- Chapters will build and maintain trails to standard considered by the industry as “sustainable.”
- Trail infrastructure (signs, trailheads, etc) and trail damage will be addressed as reasonable by local chapter.
- Local chapter will check-in with each landowner each riding season to ensure the landowner's satisfaction with VMBA and the local chapter.
- Chapter will protect a vulnerable trail resource through “trail conditions and closings” via media available to chapter.

### **Landowner Responsibilities**

- The landowner should be involved with VMBA chapter from the beginning in the planning all mountain bike trails on his/her land.
- It is suggested the landowner walks the trails periodically and report trail hazards to local chapter. The inclusion of any new trail obstructions (gates, down trees, sink holes, significant erosion etc.) must be made known to the local chapter so repairs can be prioritized.
- If a problem arises the landowner should immediately contact VMBA and local chapter.

To emphasize again: public use on private property for recreational purposes is a privilege not a right. Ultimately, the landowner controls what happens on her/his land. The landowner may specify only certain types of use while prohibiting others. Prohibiting one type of use while accommodating another is accomplished through legal posting (10 V.S.A. Section 5201) or contact your town clerk.

### **Changes in Land Access/Acquisition**

- If a landowner hosting VMBA/chapter trails is no longer willing to allow mountain biking in her/his land, it is requested by the association this notice is made in writing to the local chapter and a meeting take place to discuss the reasons for the decision.
- If VMBA or chapter desires to acquire an easement for a trail for public use, landowner participation is strictly on a voluntary, “willing seller/will buyer” basis.
- Under Vermont law, the State of Vermont cannot use eminent domain as a means to acquire land for recreation or conservation. The Federal Government does have this authority, but only for acquisitions associated with the Appalachian Trail.

- Under Vermont law, when a landowner grants permission for public recreation, individuals using it cannot claim prescriptive easement as a result of their work. Granting access clearly establishes ownership from the outset.

Thank you for taking the time to learn more about how you can partner with VMBA to promote healthy lifestyles and family-friendly outdoor activities. Please be in contact with questions. Thank you.

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