



## Recreational Use Shields Owners from Liability

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Concerns about the potential for liability for proposed open space and recreational areas are uppermost in the minds of owners, regardless of whether the owner is a private owner or the government. Massachusetts, General Law c. 21 sec. 17C, more commonly known as the "Recreational Use Statute", affords any owner who allows the public to use their land for recreation at no charge relief from liability, so long as the owner has not been willful, wanton or reckless. The statute reads as follows:

**Chapter 21: Section 17C.** Public use of land for recreational, conservation, scientific educational and other purposes; landowner's liability limited; exception.

**Section 17C.** (a) Any person having an interest in land including the structures, buildings, and equipment attached to the land, including without limitation, wetlands, rivers, streams, ponds, lakes, and other bodies of water, who lawfully permits the public to use such land for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee therefor, or who leases such land for said purposes to the commonwealth or any political subdivision thereof or to any nonprofit corporation, trust or association, shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of willful, wanton, or reckless conduct by such person. Such permission shall not confer upon any member of the public using said land, including without limitation a minor, the status of an invitee or licensee to whom any duty would be owed by said person.

(b) The liability of any person who imposes a charge or fee for the use of his land by the public for the purposes described in subsection (a) shall not be limited by any provision of this section. The term "person" as used in this section shall be deemed to include the person having an interest in the land, his agent, manager, or licensee and shall include without limitation, any governmental body, agency or instrumentality, nonprofit corporation, trust or association, and any director, officer, trustee, member, employee or agent thereof. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section.

### Interpreting the Recreational Use Statute

In interpreting the recreational use statute, the court in *Sandler v. Commonwealth*, 419 Mass. 334 (1990) defined willful, wanton or reckless conduct for the purposes of the Recreational Use Statute to be the same as that required for criminal liability. "Reckless failure to act involves an intentional or unreasonable disregard of a risk that presents a high degree of probability that substantial harm will result to another [such that the] risk of death or grave bodily injury must be known or reasonably apparent..."

In other words, so long as an owner did not do something that was so dangerous, and so obviously probable to cause serious bodily injury or death, they are shielded from liability to a recreational user. This protection may not protect an egregious failure to maintain a

playground; however, the Massachusetts Recreational Use Statute contains no statutory exemption for playgrounds, *Molinaro v. Town of Northbridge*, 643 N.E.2d 1043, 1044 (1995), so municipalities and neighborhood play yards are also protected.

Some of the cases that have been decided by Massachusetts and the 1st Circuit Courts illustrate the broad range of protection afforded by the Recreational Use Statute:

*Anderson v. Springfield*, 406 Mass. 632 (1990). The recreational use statute is applicable to injuries on municipally-owned and other governmentally-owned recreational areas to the same extent as to private landowners.

*Sandler v. Commonwealth*, 419 Mass. 334 (1995). The persistent failure to remedy defects in a tunnel on a traveled bikeway was not wanton or reckless conduct imposing liability under c. 21, sec. 17C for injuries to bike rider who hit an uncovered 8-inch drain hidden by a puddle of water in an unlit tunnel (the drain was constantly coming uncovered and the lights were usually broken). The Sandler court found that "a persistent failure to repair defects in the tunnel on a traveled bikeway simply does not present a level of dangerous that warrants liability" under section 17C.

*Seich v. Town of Canton*, 426 Mass. 84 (1997) – charge for registration fee to participate in basketball league is not an entrance fee for public use of property, so no liability.

*Hardy v. Loon Mountain Recreation Corp.* U.S. Court of Appeals for the First Circuit, No. 01-1263, January 8, 2002. No liability to injured plaintiff who paid to ride a gondola to the top of the mountain, since anyone could hike up or get there by other means because "charge" means an actual admission fee paid for permission to enter the land for recreational purposes. (citing cases holding that private instructor fees, campground facility fees, parking fees per car, and not per occupant are not "charges" for purposes of recreational use statute so long as use in general of the area is without charge).

This case contains an excellent discussion of the history and purpose, as well as the protections, of the recreational use statute.

*Shu-Ra Ali v. City of Boston*, 441 Mass. 233 (March 15, 2004). Ali was riding his bicycle taking a short cut home through Franklin Park, owned by the City of Boston and open to the public free of charge, for non-recreational purposes (he was on his way home from making a purchase at a store.) He collided with a gate, which had no warning signs, seriously injuring himself. He argued that his use was not recreational, but for transportation, and therefore the City would be liable for ordinary negligence. The Court ruled that the intent of the user does not take away the protections of the RUS, so long as the use was objectively recreational (as is riding a bicycle). The placing of a gate across a path to prevent vehicular access, which allowed access on either side for pedestrians and bicycles, without warning signs, did not rise to the level of willful, wanton and reckless conduct required for liability.

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