



## NEW YORK STATE'S RECREATIONAL USE STATUTE: "THE GENERAL OBLIGATIONS LAW"

The Recreational Use Statute (General Obligations Law § 9-103) was established to encourage landowners to open up their land to the public for certain specified recreational uses, by indemnifying these landowners from liability. The statute lists the following covered uses: hunting, fishing, organized gleaning as defined in § 71 [y] of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training dogs. Other states' Recreational Use statutes preface their covered uses list with the phrase "including but not limited to," allowing their range of covered activities to be broader.

The law applies to landowners whether they grant permission for use of their property or not, as long as the landowner does not receive a consideration (fee) for this use of their property. Further, under the G.O.L. § 9-103 [1] [a], "an owner, lessee or occupant of premises, whether or not posted . . . **owes no duty to keep the premises safe for entry . . . or to give warning of any hazardous condition . . . to persons entering such premises.**" Those who seek to impose liability on the landowner must then prove the high standard that "the defendant willfully and maliciously failed to guard or to warn against a dangerous condition, use or structure, or activity. The defendant's negligence, if any, is immaterial."<sup>1</sup> The Court may question whether if the use of the land was generally suitable for the recreational activity being pursued, focusing on the evidence of the past public use of the property for that activity. Protection under the statute is not limited to claims arising in wilderness, remote, or undeveloped lands.

Special rules apply to publicly owned lands that are protected in certain circumstances by the Recreational Use Statute. "The applicability of the statute depends not only on the character of the land itself, but also on the role of the landowner in relation to the public's use of the property, particularly in those cases involving a governmental landowner."<sup>2</sup> The courts draw a distinction between public lands that are managed in a mostly passive manner and those that have actively managed, operated, maintained, and supervised public recreational facilities. Where a municipality has already held a "supervised" park open to the public and needs no encouragement to do so from the prospective immunity offered by the statute, the law will not protect these properties.

The Recreational Use Statute affords considerable protection to private (and in some cases public) landowners, both in rural and more urbanized settings. Its protection can be further enhanced with measures such as extending municipal insurance coverage to private landowners who allow trail access. We strongly urge participants in community trails to consult their own attorneys to determine how the Recreational Use Statute would apply to them. The Greenway Conservancy can provide a summary of the relevant case law to help guide potential participants and their legal counsel toward an accurate understanding of the current state of the law.

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<sup>1</sup> Sega v. State, 469 N.Y.S.2d 51, 55 (Ct.App. 1983)

<sup>2</sup> Wilkins v. State of New York, 165 AD2d 514, 517 (A.D. 3 Dept. 1991)