

Guide to Pennsylvania's Recreational Use of Land and Water Act



A Law Limiting the Liability of Those Who Open Their Land to the Public

The Recreational Use of Land and Water Act limits the liability of property owners who open their land to the public for recreation. This guide describes the immunity provided to owners in regards to claims of personal injury and loss of property and reviews relevant case law.

- Introduction 1
- Scope of Immunity Defense 1
- Who Does RULWA Cover? 2
- Which Kinds of Recreation Are Covered? 2
- What Types of Land Are Covered? 2
 - Courts Disinclined to Cover Developed Land 2
 - 2018 Law Expands List of Lands and Facilities Expressly Protected Under RULWA 3
- Can Owners Charge Fees? 4
- How Public Does the Access Have to Be? 4
- Failure to Warn 4
- Governmental Immunity 5
- Can a Protected Landowner Still Be Sued? 5

[For a succinct two-page introduction to this topic, see the [Overview of Pennsylvania's Recreational Use of Land and Water Act](#) at [ConservationTools.org](#)]

Introduction

Pennsylvania's [Recreational Use of Land and Water Act](#) (RULWA) limits landowners' liability for personal injury and property damage if they make their land available to the public for recreation. The purpose of the law is to encourage landowners to allow recreational users onto their properties by limiting the traditional duty of care that landowners owe to entrants upon their land. **RULWA provides that landowners do not have to keep their land safe for recreational users and have no duty to warn of dangerous conditions, so long as no "charge" (as defined by the Act, which provides certain exceptions described below) is required for entrance.** This immunity from liability does not protect landowners who willfully or maliciously fail to warn of dangerous

conditions; that is, RULWA immunizes owners only from claims of negligence.

This 1966 law, found in Purdon's Pennsylvania Statutes, title 68, sections 477-1 et seq., was amended by the Pennsylvania General Assembly in 2007, 2011, and 2018 to enhance the protections for owners.

Because courts have tended to interpret narrowly the types of land covered by RULWA, landowners and easement holders should not rely solely on RULWA's protection, but should couple the protection, where appropriate, with the steps and tools outlined in the guide [Reducing Liability Associated with Public Access](#).

Scope of Immunity Defense

Like every state in the nation, Pennsylvania has a statute that provides a degree of immunity to landowners who make their properties available to the public for free recreational use. The Recreational Use of Land and Water Act provides that:

[A]n owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

Landowners who permit or invite members of the general public onto their properties for recreational purposes, free of "charge," can raise this statute as a defense if they are sued for personal injury or property damage.

On its face, RULWA applies to all recreational “land” — improved and unimproved, rural and urban. However, at least prior to the 2018 amendment expressly expanding the definition of “land,” Pennsylvania courts tended to read RULWA narrowly. It remains to be seen whether courts will broaden the scope of RULWA coverage now that the definition expressly includes man-made amenities, including trails, bridges, and parking areas (see “Types of Land Covered by RULWA” below).

RULWA does not prevent landowners from being sued; it provides them with an immunity defense to claims that their *negligence* caused the plaintiff’s injury. Negligence is the failure to exercise ordinary care such as a reasonably prudent and careful person under similar circumstances would exercise. The level of duty of care that landowners owe to entrants depends on the classification of the entrant. Landowners owe a high duty of care to people invited or permitted onto the land (i.e., “invitees” or “licensees”). But landowners owe trespassers only the duty not to deliberately or recklessly harm them. RULWA essentially *reduces* the duty of care landowners would otherwise owe to recreational users to the lower duty owed to trespassers.

Under this lower duty of care, plaintiffs must prove that landowners acted “willfully or maliciously” rather than negligently. (“Nothing in this act limits in any way any liability which otherwise exists...[f]or wilful [sic] or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.” 68 P.S. §477(6)(1)). While willful or malicious behavior is less than “intentional” misconduct, it requires reckless or egregious behavior well beyond mere carelessness. Proving this is a heavier burden than proving negligence, and thus plaintiffs are much more likely to have their suits dismissed before trial (on a motion for summary judgment) or ultimately to be unsuccessful in their litigation.

Who Does RULWA Cover?

The “owners” of land protected by RULWA include public and private landowners as well as tenants, lease holders (such as hunt clubs), and other persons or organizations “in control of the premises.” Grantors

of trail or fishing access easements are considered owners for purposes of RULWA. Holders of conservation easements and trail easements also are protected under RULWA if they exercise sufficient control over the land to be deemed “possessors.” See *Stanton v. Lackawanna Energy Ltd.*, 820 A.2d 1256 (Pa. Super. 2003), *aff’d*, 584 Pa. 550, 886 A.2d 667, 673 (2005). If, on the other hand, easement holders don’t exercise enough control to be possessors, they would not be subject to liability at all under common law principles of negligence (see *Stanton*).

Which Kinds of Recreation Are Covered?

The broad range of activities that constitute the recreational purpose covered by RULWA was further widened in the 2018 amendment to the statute. RULWA now defines “recreational purpose” as:

any activity undertaken or viewed for exercise, sport, education, recreation, relaxation or pleasure and includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, recreational noncommercial aircraft operations or recreational noncommercial ultralight operations on private airstrips, camping, picnicking, hiking, pleasure driving, snowmobiling, all-terrain vehicle and motorcycle riding, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic, or scientific sites. 68 P.S. §477(2)(3)

What Types of Land Are Covered?

Courts Disinclined to Cover Developed Land

The General Assembly expanded RULWA’s original 18-word definition of “land” to 69 words in its 2018 amendment of the statute:

“Land” means land, roads, water, watercourses, private ways and buildings, **amenities**, structures, **boating access and launch ramps, bridges, fishing piers, boat docks, ramps, paths, paved or unpaved trails, hunting blinds** and machinery or equipment when attached to the realty. **The term**

shall also include areas providing access to, or parking for, lands and waters, including, but not limited to, access ramps, trails or piers for use by recreational users with disabilities. 68 P.S.

§477(2)(1) [*emphasis added to indicate language added in 2018*]

Prior to the 2018 amendment, although on its face the statute applied to both developed and undeveloped land, Pennsylvania courts limited RULWA immunity to land that remained largely in its natural state, explaining that:

[t]he need for immunity arises because of the impracticability of keeping large tracts of mostly undeveloped land safe for public use. *Stanton, above*.

The courts further noted that RULWA:

was not intended to insulate owners of fully developed recreational facilities from the normal duty of maintaining their property in a manner consistent with the property's designated and intended use by the public. *Mills v. Commonwealth* 534 Pa. 519, 633 A.2d 1115 (1993).

Consequently, courts were consistent in disallowing RULWA protection for "highly developed" facilities such as:

- Outdoor swimming pools (*City of Philadelphia v. Duda*, 141 Pa. Cmwlth. 88, 595 A.2d 206 (1991))
- Basketball courts (*Walsh v. City of Philadelphia*, 526 Pa. 227, 585 A.2d 445 (1991))
- Playgrounds (*DiMino v. Borough of Pottstown*, 142 Pa. Cmwlth. 683, 598 A.2d 357 (1991))

Playing fields also generally were held not to be within the protection of RULWA:

- Baseball field in *Brown v. Tunkhannock Twp.*, (*Brown v. Tunkhannock Twp.*, 665 A.2d 1318 (Pa. Cmwlth. (1995))
- Lacrosse field in *Seifert v. Downingtown Area School District*, Pa. Commonwealth Ct. 1992
- Football field in *Lewis v. Drexel University*, Pa. Superior Ct. 2001, unreported

But RULWA was applicable to a softball field under *Wilkinson v. Conoy Twp.*, Pa. Commonwealth Ct. 1996.

For those managing such facilities, it is prudent to assume that the courts will continue to find that these "highly developed" facilities (and likely playing fields as well), are outside the scope of RULWA protection.

2018 Law Expands List of Lands and Facilities Expressly Protected Under RULWA

The expanded definition explicitly provides immunity protection for a variety of developed park features and user amenities such as docks, ramps, piers, trails, and parking lots. It is reasonable to assume that other typical park "amenities" and "structures," such as picnic shelters and restrooms, would also be included within this definition even if they are not explicitly listed.

But courts may continue to weigh whether "too many" developed features takes a property into the highly developed (and thus unprotected) category. And if the injury is caused by an unusual amenity that isn't specifically listed in the definition, that will engender court scrutiny as well.

Prior to the 2018 amendments, courts examined whether the particular area of land involved in the injury was developed or not, rather than considering the facility as a whole. For example, in *Bashioum v. County of Westmoreland*, 747 A.2d 441 (Pa. Cmwlth. 2000), the plaintiff was injured on a giant slide located within a 400-acre park that was otherwise unimproved. The appellate Commonwealth Court sided with the plaintiff, noting that the analysis properly centered on the specific site where the injury occurred (the slide), rather than on the totality of the largely undeveloped park. Because the slide was a "developed" feature, the defendant county could not claim RULWA protection.

Other cases provide additional insight into how courts will determine whether RULWA immunity covers land that is partially improved. In *Davis v. City of Philadelphia*, 987 A.2d 1274 (Pa. Cmwlth. 2010), the plaintiff was injured after he fell in a hole while playing flag football on a field located in Fairmount Park, an urban park replete with roads, museums, and statues. Although groups sometimes played sports on the field, its primary purpose was as overflow parking for the Philadelphia Zoo. The grassy field was lined with trees maintained by the park department, and the

grass was mowed every two weeks during warmer months. The *Davis* court concluded that although the field “must have been cleared of trees and brush at some point,” this clearing and the minimal maintenance conducted since then was insufficient to take the land out of the scope of RULWA. The deciding factor, reasoned the court, was that there were no improvements at the field that required regular maintenance.

In contrast, in *Hatfield v. Penn Township and Penn Township Athletic Association*, 12 A.3d 482 (Pa. Cmwlth. 2010), the appellate court found that a 20-foot-wide grass and dirt pathway between two fenced-in ball-fields was sufficiently altered to remove it from RULWA protection. Employees of the defendant township cut the grass on and around the heavily used path every two weeks and fixed occasional defects in the path, including spreading topsoil and fixing impressions in the ground with front loaders. There was no evidence before the court that the grass/dirt path had ever been graded or altered from its original state—merely that it had been regularly maintained. The appellate court reversed the trial court and ruled that RULWA immunity was not available because the pathway was an improvement requiring regular township maintenance to be used in a safe manner. However, this may no longer be good law after the 2018 amendment specifically defining an unpaved trail as a feature covered by the Act.

Similarly, in *Brezinski v. County of Allegheny*, 694 A.2d 388 (Pa. Cmwlth. 1997), the plaintiff suffered injuries when he fell down an “earthen embankment in a county-owned park, walking downhill from a picnic pavilion to the parking lot.” The court ruled that the one-time modification of the hill by sculpting it into an embankment that did not necessitate regular maintenance did not alter the land’s essentially unimproved character). (Also see *Rightnour v. Borough of Middletown*, 48 Pa. D&C 4th 117 (Dauphin C.C.P. 2000) which found that private property containing a footpath leading to the Swatara Creek, created by continuous usage, was covered by RULWA, and the landowner had no duty to erect a warning sign or fence between his property and the adjacent municipal park.)

See also *Stone v. York Haven Power Co.* (Pa. Supreme Ct. 2000)) which found that an artificial lake is just as subject to RULWA protection as a natural lake, although the dam structure itself was not covered.

Can Owners Charge Fees?

RULWA protection generally isn’t available if owners charge for admission. However, the 2018 amendment clarifies and creates exceptions to what is considered a prohibited “charge.” The following now **are allowed** without negating RULWA protection:

- Voluntary contributions by recreational users
- In-kind contributions (e.g., receiving the meat of deer hunted on the property)
- Contributions made to an owner that are not retained by the owner and are used by the owner exclusively for: conserving or maintaining the land, paying taxes on the land, or paying for liability insurance on the land.

How Public Does the Access Have to Be?

If someone is hurt or their property is damaged in association with using a property owner’s land, the owner will receive RULWA immunity *even if the owner has not expressly invited or permitted the public to enter the property*. In fact, even when landowners post “No Trespassing” signs they have been held to be covered by RULWA. (See *Friedman v. Grand Central Sanitation, Inc.*, 524 Pa. 270, 571 A.2d 373 (1990) which found an owner of posted landfill not liable to a hunter who fell in a trench.)

However, where the land is open only to selected people rather than to the public in general, this will weigh against RULWA immunity.

Failure to Warn

Although RULWA immunizes landowners from negligence claims, landowners remain liable for willful or malicious failure to guard or warn recreational users of a dangerous condition. To determine whether a landowner’s behavior was willful, courts will look at whether the owner had actual knowledge of the threat

and whether the danger would be obvious to entrants. Actual knowledge might be presumed if the owner were aware of prior accidents at the same spot. But if the land contained a dangerous feature that should have been obvious to recreational users, they may be considered to be put “on notice,” which generally would preclude landowner liability.

Governmental Immunity

Pennsylvania's governmental immunity statutes, the Tort Claims and Sovereign Immunity Acts, shield municipalities and commonwealth agencies from claims of willful misconduct. Liability may be imposed upon these entities only for their negligent acts. But, as noted above, where an injury occurs on “land” within the meaning of RULWA, RULWA shields landowners from negligence suits. Consequently, public agencies are granted *total* immunity for certain recreational injuries. In *Lory v. City of Philadelphia*, 544 Pa. 38, 674 A.2d 673 (1996), for example, a boy drowned jumping off a rock ledge into a creek containing submerged rocks. The city was found immune under RULWA on a claim of negligent maintenance of recreational lands and also was found immune under the Political Subdivision Tort Claims Act for willful failure to warn of hazards on the property, leading the plaintiff's suit to be dismissed.

Can a Protected Landowner Still Be Sued?

The reality is that pretty much anyone can be sued for pretty much anything. RULWA does not prevent landowners from being sued; it provides them with an immunity defense to claims that their *negligence* caused the plaintiff's injury. However, the 2018 amendment expanded the Act's protections for landowners and should be helpful in reducing frivolous litigation.

The [Pennsylvania Land Trust Association](#) produced this guide with support from the William Penn Foundation, the Colcom Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

[Debra Wolf Goldstein, Esq.](#), and [Andrew M. Loza](#) are the authors.

Nothing contained in this or any other document available at ConservationTools.org is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2019, 2011 Pennsylvania Land Trust Association. Text may be excerpted and reproduced with acknowledgement of [ConservationTools.org](#) and the Pennsylvania Land Trust Association.

v. 6/14/2019