Town Topics, March 2, 2005 Legal Forum:
"The Landowner Liability Act"
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New Jersey is one of the most densely populated states in the nation, which means that the availability of undeveloped land that can be used for hiking or other recreational activities is becoming increasingly scarce. Out of fear of liability, property owners may be reluctant to grant access to their lands or to give conservation easements for recreational activities. These property owners would do well to explore the protections offered by the New Jersey Landowner Liability Act, N.J.S.A. 2A:42A-2 et seq.

The purpose of the Act is to induce landowners (where used in this article, the term landowner also includes lessees and occupants) to make their properties available for sport or recreational activities by limiting the tort liability these owners might otherwise face under the common law. “Sport and recreational activities” is defined to include hunting, fishing, horseback riding, hiking, camping, and other outdoor recreational activities.

The Act provides that a landowner owes no special duty to keep his or her property safe for entry or use by others for sport and recreational activities, or to warn persons entering for such purposes of hazardous conditions of the land. The Act also provides that a landowner who gives permission to another to enter upon his or her property for a sport or recreational activity does not thereby (1) extend any assurance that the property is safe for such purpose; (2) change the person’s status to that of an “invitee” (to whom a higher duty of care is owed); or (3) assume responsibility or incur liability for that person’s acts that cause injury to another or damage to property. These limitations on liability apply to public and private entities alike.

The Act’s limitations on liability also apply, in varying degrees, to the following: (1) farmers who grant permission to bike, horseback ride, or operate a snowmobile or all-terrain vehicle on their properties; (2) the owners of premises upon which public access has been required as a condition of a regulatory approval of, or by agreement with, the Department of Environmental Protection; and (3) the owners of premises on which a conservation restriction is held by the State, a local unit (e.g. a municipality), a charitable conservancy, or premises upon which public access is allowed pursuant to a public pathway or trail easement held by one of these entities.

The Act does not, however, limit liability in the following circumstances: (1) willful or malicious failure to guard or warn against a dangerous condition or activity; (2) injury suffered where permission to engage in recreational activities was granted for a consideration (i.e., in exchange for something of value, such as money), other than a consideration paid to the landowner by the State; or (3) injury caused by someone engaged in recreational activity to someone who is on the property for the landowner’s personal affairs.

Historically, the courts have held that the Act only applies to rural or semi-rural lands. However, one section of the Act now defines “premises” to include lands located in urban and suburban areas. This definition raises a question as to whether “premises” will be interpreted more broadly in the future by the courts.

Landowners considering granting access to their properties for recreational use or considering selling conservation easements to a local government or nonprofit organization would be prudent to consult with an attorney first to review the Act’s provisions in detail. Nevertheless, such landowners should be aware that the Legislature has created special immunities to encourage them to make their properties available for recreational activities for the benefit and enjoyment of others.