



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1994

Honorable Allen Hightower
Chair
Committee on Corrections
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-094

Re: Interpretation of sections 75.001 to 75.003 of the Civil Practice and Remedies Code, which limit the liability of landowners, lessees, or occupants of real property who permit recreational use of their land (ID# 25540)

Dear Representative Hightower:

You ask this office to interpret sections 75.001 to 75.003 of the Civil Practice and Remedies Code, which limit the liability of landowners, lessees, or occupants of real property who permit recreational use of their land.

Section 75.002(c) provides that an "owner, lessee, or occupant of real property" who permits another

to enter the premises for recreation . . . does not:

- (1) assure that the premises are safe for that purpose;
- (2) owe to the [permittee] a greater degree of care than . . . to a trespasser . . . ; or
- (3) assume responsibility or incur liability . . . caused by any act of the [permittee]

Section 75.002(b) extends this freedom from liability to proprietors of agricultural land, section 75.002(c) to those who possess non-agricultural land.

You first ask whether "hunting clubs or an individual who leases land for hunting is covered by the law?" In our view, the answer to your question is yes. We view the phrase "an owner, lessee or occupant of" real property, whether agricultural or non-agricultural, to include all legal entities with a present possessory interest in real property¹ Further, we note that section 75.001 defines "recreation" as "an activity such as hunting."

¹We note that this provision does not apply to governmental entities, who owe a higher duty of care under section 101.022 of the Texas Tort Claims Act. Civ. Prac. & Rem. Code ch. 101. *City of Dallas v. Mitchell*, 870 S.W.2d 21 (Tex. 1994).

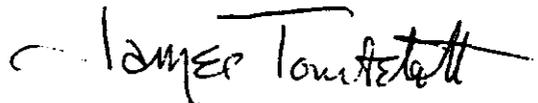
You ask if there are "any exceptions" to the statute's coverage. We would point out that limitation of liability, according to section 75.002(d), does not apply to gross negligence, malicious intent, or bad faith. Further, section 75.003(c) states that the chapter generally applies to owners, lessees, or occupants of real property who either do not charge for entry on the premises, or "whose total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than twice the total amount of ad valorem taxes imposed on the premises for the previous calendar year."

Further, you note that some landowners require that lessees acquire recreational liability policies which name the owner as an additional insured. You ask if this coverage is "warranted under the state law." As we read the Civil Practice and Remedies Code, there may be little economic rationale for the owners to make such a requirement, since section 75.002 insulates them from any liability save for gross negligence, intentional torts, or bad faith, which are generally uninsurable. However, we see nothing in the chapter which would forbid a landowner from making such a requirement as a contractual matter, should the landowner decide to do so out of an abundance of caution.

S U M M A R Y

Section 75.002 of the Civil Practice and Remedies Code's reference to an "owner, lessee, or occupant" of real property includes within it all legal entities with a present possessory interest in real property. The limitation of liability in this chapter does not apply to intentional torts, gross negligence, or bad faith. Further, the chapter applies only to owners, lessees, or occupants who either do not charge for entry on the land, or whose total charges do not exceed twice the total amount of ad valorem taxes imposed on the premises for the previous calendar year. Nothing in the chapter would forbid a landowner, as a contractual matter, from requiring his lessee to acquire recreational liability insurance naming the owner as an additional insured.

Yours very truly,



James Tourtelott
Assistant Attorney General
Opinion Committee