

Natural Resources

Liability Considerations for New York Woodland Owners

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New York's woodlands, which now cover more acreage than at any previous time this century, are being used by people at an unprecedented level for cutting and gathering of firewood and for recreation. Other uses, such as timber harvesting, Christmas trees, and maple sirup, remain important.

The increased use of private nonindustrial woodland areas of New York has heightened the concerns of many landowners regarding liability. What is the landowner's liability if he or she allows someone to (1) cut firewood, (2) make improvements on the woodlot, or (3) hunt, hike, or use the woods for other recreational purposes? Answers to these questions are often complicated and require the advice of both an attorney and an insurance agent. However, by understanding liability laws related to owning forest property, one can make more informed decisions or direct more specific questions to an attorney or an insurance agent. This publication is directed primarily toward private, nonindustrial landowners who are not in the logging or lumbering business, but who may occasionally wish to make a timber sale, allow someone to cut firewood, or use the property for recreational purposes.



Harvesting of Forest Products

The laws that affect liability of woodland owners are usually not specific as to the use of the forest product being harvested. More important is the question of who benefits from the cutting, whether a contract is involved, and whether the landowner makes or receives payment as part of the transaction. Each of these situations is discussed.

Case of Landowner Making Payment

Several situations exist in which the landowner might hire someone to make improvements in his or her woodlot. Thinning a woodlot and removing low-grade or cull trees are the most common examples. The landowner may contract with someone to cut and remove these unwanted trees (the wood may or may not be regarded as partial payment), or the landowner may wish to use the harvested wood for firewood (or sell it to someone

else). A landowner might also pay someone to cut firewood for the landowner's use.

The cutting of wood, whether the wood is standing or felled, and many associated activities, such as skidding and use of machinery for removal of wood, are legally classified as a hazardous occupation. As a result, any worker who performs a service of cutting or removing wood for another, except in certain farming situations (described subsequently), is protected by Worker's Compensation (formerly Workman's Compensation) Insurance (WCI). The ultimate responsibility for payment of WCI is on the landowner who contracts to have the work done. Many logging and other forestry businesses already have WCI to cover their employees. Before having any work done, however, it is strongly recommended that the landowner obtain a certificate of insurance from the cutter's insurance

company showing that the company's employees working in the woods are covered for WCI. If individuals working in your woodlot for you or for someone you contract with do not have and either cannot or will not obtain WCI, it is the landowner's legal responsibility to obtain it.

The law (Section 56, Worker's Compensation Law) does not specifically state that a payment has to be made before WCI is required. Rather, it states that a contract has to be in effect. This implies that the person(s) or firm doing the work is performing a service for the landowner. A contract need not be in written form, and payment need not be in cash.

A farmer is required to carry WCI to cover anyone employed on or after April 1 of any year, if in the preceding calendar year the farmer paid \$1,200 or more in cash remuneration for all farm labor. However, if farm employees are involved in woodcutting operations not directly related to farming operations, the farmer must carry WCI, regardless of the amount of wages paid the previous year.

In addition to the question of liability for WCI, the landowner should ascertain that there is additional insurance to cover damages to another person or another firm's person or property. Suppose in the process of harvesting, a woodcutter drops a tree across a power line and breaks it, or suppose a tree is felled across an adjacent roadway and causes an accident involving a motor vehicle. The ultimate responsibility may fall on the landowner. Some homeowners, farm owners, and other general liability policies cover this type of liability, especially if the woodcutter is an individual who does not regularly do forest-related work for a living. Many homeowners and farmowners policies do not cover this type of liability when the landowner pays to have the work done; these policies almost certainly would not cover damages to third parties by employees of incorporated businesses.

In most cases where you hire or contract work that involves woodcutting, you will need a

comprehensive general liability policy that includes independent contractors and contractual liability coverage. Some forestry companies already have this insurance. Before relying on their insurance, however, you should obtain a statement giving the type of coverage included, the dollar limits of the coverage, and the dates for which the policy is in force. Go over this information carefully with your insurance agent. Remember that if for any reason the forestry company's insurance does not fully cover an injury to a third party's person or property, this liability will likely fall on you, the landowner.

Sales Involving Payment to Landowner

If the landowner has sold timber or firewood to a buyer who cuts the wood for his or her own use or for resale, the landowner is not responsible for Worker's Compensation Insurance. The responsibility for WCI falls upon the owner of the timber. For this reason, if the landowner is to clearly avoid liability for WCI in such cases, he or she should have a written copy of a sale document showing that the sale was completed before the beginning of cutting. In such cases involving sales, if the woodcutter is injured, the landowner is liable only if he or she can be shown to be negligent in some way. It should be noted, however, that landowners who are selling a product are typically held liable by courts for a higher standard of safety than landowners who do not sell a product and charge a fee.

Some ways of minimizing risks and being found liable follow:

- Eliminate any obvious hazards in the area where the woodcutter will be, including pathways to and from the cutting area. Enclose by fences or other means any hazard that cannot be eliminated. Warn the woodcutter of any hazards you know about, but cannot eliminate.
- Have the woodcutter use his or her own equipment. This removes the possibility of your being found negligent of providing the woodcutter faulty equipment or of not giving sufficient instruction

in use of the equipment.

- Warn anyone who you have reason to believe might be in the cutting area to stay out during cutting operations.

- Consider the risks of cutting near power lines, roadways, dwellings, or adjacent property. Also consider the skill of the person doing the cutting. Is the woodcutter a professional who has the proper equipment, or is he or she relatively inexperienced? Even if the woodcutter is insured and you are insured, do you feel the risk is worth taking?

Landowners who sell forest products can be protected by purchasing a comprehensive general liability policy or contractual liability insurance. Such policies are widely available from insurance companies. In some cases involving onetime or occasional sales, a standard homeowners or farm owners liability policy *may* provide coverage. However, some of these policies exclude business ventures, which could be interpreted as a sale of any type. Before relying on these policies to cover the sale of forest products, the landowner should first check with the insurance company and obtain a written statement assuring coverage.

Case of Forest Products Being Given Away

Sometimes landowners may receive requests to allow others to gather fallen wood, to cut down dead trees, or to cut undesirable or mishaped trees. There may be other cases in which the landowner is willing to let friends, neighbors, or others cut or harvest limited amounts of wood at no cost.

Effective September 1, 1979, General Obligations Law 9-103 states that assuming no fee is charged and no other consideration is received, the landowner owes no duty to keep the premises safe for entry or use by those engaged in the cutting or gathering of wood for noncommercial purposes. Furthermore, the statute states that the landowner owes no duty to give warning to noncommercial wood gatherers or harvesters of any hazardous condition, use of the property, structure, or activity on

the property. This is not a total release from liability to the landowner, however, in that it does not hold if the landowner "willfully" or "maliciously" fails to guard against or warn woodcutters of a danger or hazard. Therefore, the landowner should try to remove any obvious hazards; and assuming woodcutters or gatherers request permission and the landowner, therefore, has the opportunity to warn them, the landowner should give warning of any known hazards.

Should a person receiving free wood from the landowner under conditions specified in General Obligations Law 9-103 be injured while cutting or gathering wood, the burden of proof would be *on that person* to show *all of the following* before the landowner could be found liable:

1. that a dangerous condition existed on the property and led to the injury,
2. that the landowner knew of the condition,
3. that the landowner "willfully" or "maliciously" failed to guard or warn against danger,
4. proof of damages for which the landowner is being sued.

Note that General Obligations Law 9-103 does not hold when wood is cut

on shares, with a portion going to the landowner as payment. The wood must be freely given, with no consideration (meaning either cash or noncash payment) received by the landowner.

In most cases, a standard homeowners or farm owners policy would provide liability coverage for landowners in cases involving injury to those taking wood at no cost. However, it is still a good idea to check with your insurance agent to ascertain that your policy covers damage caused by woodcutters to persons and property of others. It is also important to check the financial limits of your policy. Damage suits of this type are not common, but they can run into the hundreds of thousands of dollars. If the limits of your policy are less than this, and especially if they are less than \$100,000, investigate the cost of additional insurance. This type of insurance is often inexpensive.

Recreational Liability

General Obligations Law 9-103 of New York, described in the previous section, also covers the recreation activities of hunting, fishing, trapping, training of dogs, boating, canoeing, hiking, horseback riding, bicycling, motorized vehicle operation for recreational purposes, snowmobiling,

cross-country skiing, hang gliding, and cave exploration. The same conditions pertain to these activities as to the noncommercial cutting and gathering of wood. Note that the limited liability protection described in the previous section is valid for recreationists only in cases where the landowner does not charge a fee or receive other considerations.

Recreational liability is covered in more detail in the fact sheet *Recreational Access and Owner Liability*, available at 15 cents per copy from the Department of Natural Resources, Cornell University, Fernow Hall, Ithaca, NY 14853.

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