

Understanding Liability & Shared Use



Shared use—also called joint use or community use—occurs when government entities or private organizations agree to open or broaden access to their facilities for community use. One of the most commonly raised concerns about shared use is liability. This fact sheet provides an overview of shared use and liability under Oklahoma law, and discusses how insurance and good risk management can reduce property owners' liability risk. Grantees of the TSET Healthy Living Program can use this information to educate the cities and governments, schools, and community institutions and organizations they are working with.

LIABILITY BASICS:

When is a Property Owner Liable?

Property owners considering allowing shared use of their recreational facilities often raise concerns about "liability." Usually what they want to know is who will be legally responsible—or liable—if someone gets hurt while on their property.

Liability is a complex legal issue. But typically the key question in determining a property owner's liability is whether the property owner acted *reasonably*.¹ Oklahoma law expects property owners to take *reasonable* precautions to prevent injuries to people who are legally on their property.² If someone on the property is hurt because a property owner did not act *reasonably*, the property owner could be liable.³ In this case, we would say the property owner was *negligent*.

What does it mean to be *reasonable*?

There is no one legal definition of "acting reasonably." It is a common sense standard, and every case is interpreted differently. To determine whether a property owner acted reasonably, a judge might ask the following questions^{2,4}:

- What was the person doing when she was injured?
- How hard would it have been for the property owner to prevent the injury?
- Did the property owner know about a dangerous condition on the property and not fix it or warn users about it?
- What are the generally accepted ways to manage that type of property?

In general, property owners are expected to take common sense and *reasonable* steps to prevent injuries; if they do not, they may be liable for any damages if someone is hurt.²

Special Liability Protections for Property Owners

Even if someone is injured and the property owner is found to have acted negligently under certain circumstances, Oklahoma law offers some special protections from liability to property owners, or immunity.

Immunity for public school districts that allow shared use for physical activity.⁵ Under a 2012 law passed,⁶ an Oklahoma school district is generally not liable for injuries that occur when it opens its property to the public during non-school hours for physical activity.⁵ The law applies to both indoor and outdoor school district facilities.⁵ For example, this immunity would apply to school districts that open up their playgrounds and gymnasiums for community use after school hours. The law does not apply if the school district's (or a district employee's) intentional or reckless actions caused the injury.⁵

Immunity for public school districts that allow shared use for other activities. Oklahoma school districts are generally not liable for injuries that occur when the public participates in activities on school grounds or inside a school building during non-school hours, so long as the activity has been approved by a school board.⁷ For example, this immunity would apply to school districts that have community gardens that are open on weekends.

Immunity for public and private property owners that open up their outdoor property for public recreational use free of charge.⁸ This protection comes from the Recreational Land Use Act, which is intended to encourage landowners to open up their land for public use without fear of liability.⁹ For example, this immunity would apply to a faith-based organization that allows the public to use a walking path on its property for free. The law does not apply if a fee is charged to use the land or a commercial for-profit enterprise is located on the land.¹⁰

No matter what, a property owner that blatantly disregards safety or intentionally hurts users of its property or facilities is liable for any injuries that occur.^{5,11}

Managing Liability Risk

Managing risk is the best way to manage liability. Property owners that allow shared use of their recreational facilities can manage their liability risk by taking reasonable, common sense steps to provide a safe environment:

- Making sure equipment and facilities are safe
- Regularly inspecting equipment and facilities
- Warning users of dangerous conditions and potential hazards, including issues such as a broken swing
- Making timely repairs
- Having participants in organized activities or programs sign a waiver and release of liability form
- Posting signs

Insurance

Insurance is another important way property owners can manage liability risk. Oklahoma law generally protects property owners from liability if they take reasonable safety measures. But a property owner can still be sued if someone is injured.

Most people who are injured because of a property owner's negligence never file a lawsuit or make a claim.^{12,13} On the rare occasion that an injured person does sue, the property owner will likely turn to its liability insurance. Before allowing free community access to recreational facilities or activities, a property owner should confirm with its insurance company that its general liability policy covers such use. If a property owner's shared use efforts include making property improvements or purchasing new equipment, the owner should update its property insurance policy accordingly.

Shared Use and Liability: Key Takeaways

- Oklahoma property owners must take *reasonable* precautions to prevent injuries to people who are legally on their property.^{1,2}
- No matter what, a property owner that blatantly disregards safety or intentionally hurts users of its property is liable for any injuries that occur.^{5,11}
- Even if someone is injured and the property owner is found to have acted negligently, Oklahoma law offers special legal protections (immunity) for (1) public school districts engaged in shared use^{5,7} and (2) public and private property owners that open up their outdoor property for free public recreational use.¹¹
- Before allowing free community access to recreational facilities or activities, property owners should confirm with their insurance company that their general liability policy covers such use.

References

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7. Okla. Stat. tit. 51 § 155(21) (2016).
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