

Liability From Owners of Recreational Areas to the Public is Limited by Colorado Statute.

In 1970, the Colorado legislature adopted Colorado Revised Statutes (CRS) Sections 33-41-101 through 33-41-106, titled, “Owners of Recreational Areas - Liability.” This statute provides that **if an owner of land allows members of the general public to use the land or adjacent waters for recreational purposes without charge¹, the owner is not liable for injury** suffered by a recreational user.²

CRS § 33-41-103(1) provides that a landowner who permits any person to use the landowner’s land for recreational purpose does not:

- (a) warrant that the property is safe;
- (b) confer to the user the legal status of an invitee or licensee; or
- (c) **assume any liability for injuries suffered by a person who was injured.**

Under English and American common law, if a landowner invites a person to his or her property (an invitee), or a person’s entry is connected with the landowner’s business (a licensee), the landowner has an affirmative duty to protect the invitee or licensee from dangers the landowner knows or should know about. All other visitors to the land are considered to be trespassers. Landowners owe a far more **limited duty of care to trespassers**—landowners are only liable for injury suffered by trespassers if the landowner intentionally injured the trespasser (such as by setting a trip-wire designed to shoot the trespasser who triggers it) or, in some jurisdictions, by failing to warn the trespasser of an abnormally dangerous situation on the property of which the owner was aware. CRS § 33-41-103(1) therefore provides that recreational users have the same (minimal) legal status as that of trespassers.

Recreational use is broadly defined in CRS § 33-41-103(2)(e)(III) to include fishing, swimming, hunting, tubing, horseback riding, camping, rock climbing, ice skating, cross country skiing, “or any other form of sports or other recreational activity.” CRS § 33-41-102(2)(e)(II) defines *land* to include roads, water, and rivers attached to the real property.

The statute does not limit liability to a landowner for “willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm.” CRS § 33-41-104(1)(a). Therefore, **landowners should post obvious warnings of known dangerous conditions on their property** and, if the landowner knows that persons have been injured previously by the dangerous condition, the landowner may be liable for not removing or protecting against the dangerous condition. The statute in CRS § 33-41-104(1)(c) provides that rivers and lakes are not deemed to be attractive nuisances. Common law generally imposes additional liability on landowners if their land is likely to

¹This statute also exempts landowners from liability if they provide an easement or lease their land to a government. This is designed to protect landowners from liability who lease their land to the Colorado Division of Wildlife, for instance, so that hunters may hunt on the land. This is an exception to the statute’s general requirement that landowners can only be protected from liability if they do not charge the recreational public to use their land. The statute provides additional protection to landowners who lease their land for hunting or fishing purposes to a governmental subdivision by providing that, if the landowner was held liable under the recreational use statute, the landowner’s liability would be limited to the municipal tort liability limit of \$150,000 per injured person, \$600,000 maximum; CRS § 33-41-103(2).

² ©Ken Ransford, June 1, 2000, ransford@csn.net, 970-927-1200, 132 Midland Ave., Suite 3, Basalt, Colorado, 81621. This description of the statute was prepared for general circulation and users of this information should have it verified by their own legal counsel. The author is not liable to readers who do not consult with the author, since the statute’s application will vary by property.

attract and injure small children, so this statute provides additional protection to landowners by stating specifically that water is not an attractive nuisance.

The preamble to this statute states, **“The purpose of this article is to encourage owners of land to make land and water areas available for recreational purposes by limiting their liability.”** CRS § 33-41-101. The legislature imposed an affirmative duty on recreational users to exercise due care when using land for recreational purposes in CRS § 33-41-105(1)(b), and took the statutorily-rare step of providing that if a landowner is sued by a recreational user and the landowner prevails, **the recreational user is required to pay the landowner’s reasonable attorneys fees** and costs of the action. CRS § 33-41-105.5. The author has found no Colorado case in which the recreational use statute was overruled and a landowner was held liable. Therefore, **for over 30 years Colorado’s recreational use statute has protected landowners who do not charge the public to use their property for recreational purposes.**