

A Landowner's Guide to Working with Sportsmen in Virginia

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Introduction

Private landowners, including forest industries, control access to 50 percent of the land suitable for outdoor recreation in Virginia. In the Old Dominion there are about 500,000 licensed hunters and over one million anglers. In addition, the numbers of hikers, canoeists, picnickers, campers, berry pickers, and bird watchers are growing each year. Many landowners report undesirable levels of trespass, litter, property damage, and game law violations. Consequently, owners of private lands suitable for public outdoor recreation are increasingly reluctant to permit public access to those lands.

Appalled by infringements on landowner rights and violation of game laws, sportsmen of Virginia founded Operation RESPECT (Responsible Educated Sportsmen Promoting Ethical Conduct Together) in 1979 to upgrade sportsman conduct and reduce sportsman-landowner conflicts. The Virginia Wildlife Federation and the Virginia Division of the Izaak Walton League provided the impetus. Working cooperatively with the Virginia Commission of Game and Inland Fisheries, Virginia Cooperative Extension Service, Virginia Forestry Association, forest industries, Virginia Division of Forestry, Virginia Commission of Outdoor Recreation, and others, Operation RESPECT aims to improve sportsman conduct through better education, increased peer pressure on irresponsible sportsmen, strengthened game laws and better enforcement, and assistance to private landowners.

Support for Operation RESPECT is growing, and sportsmen are more aware of landowner rights and concerns. Nevertheless, abuse of private lands continues, and many property owners need help. Often, landowners who work positively with responsible sportsmen benefit through better security, new friends, additional income, and the personal satisfaction that comes from

helping others. This publication discusses (1) liability, (2) alternative ways of managing access to private lands, and (3) uses and methods of posting. In the appendices are a model lease agreement, permission card, and sources of assistance for landowners.

Liability

Concern about legal liability for recreationists prevents some landowners from sharing access to their undeveloped lands with others. However, the Virginia General Assembly has addressed this concern in Virginia Code Section 29-130.2, as amended in 1982. Paragraph (b) of the code states:

A landowner shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, participation in water sports, boating, biking, hiking, sightseeing, hang gliding, skydiving, horseback riding and bicycle riding, collecting, gathering, cutting or removing firewood, nor shall a landowner be required to give any warning of hazardous conditions or uses of, structures on, or activities on such land or premises to any person entering on such land or premises for such purposes except as provided in (d) hereof.

The exceptions, in paragraph (d), concern payment of a fee, other than that necessary to cover taxes, to the landowner and "willful or malicious failure to guard or warn against a dangerous condition, use or structure" on the property.

The Virginia Code attempts to protect from liability the landowner who permits free public recreation on his land. Of course, the property owner should eliminate obvious hazards such as open wells and falling down buildings, or fence-off and identify with warning signs any hazard that cannot be eliminated, such as a rock

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quarry. The landowner may wish to consider insuring the property subject to casualty and obtain comprehensive liability insurance. These are relatively inexpensive additions to standard and homeowner insurance policies. For example, a \$1,000,000 umbrella addition to an existing policy costs about \$100 per year. Umbrella coverage includes increased protection from damages and injuries suffered in automobile accidents. Sportsmen can be asked to help provide financial or other support in return for permission to use the lands.

Landowners can fix more firmly the burden of liability for property damage and casualty on the recreationists. Fundamentally, sportsmen are responsible for their own safety and for any damages they cause to the property of others. Lease agreements, individual permit cards, and guest permit cards include codes of ethical conduct while the holders are on the property. Operation RESPECT programs are reaching Virginia sportsmen with the message that they should be more than willing to sign a promise to conduct themselves ethically and set good examples. Furthermore, landowners can require sportsmen to show proof of insurance. Sportsman insurance is available through insurance companies and national sportsman organizations. For example, a hunting club of 50 members can purchase liability coverage of \$300,000 for an annual cost of about \$150, only \$3 per member.

Ethics for Sportsmen

Much is being written and spoken about ethics--standards of acceptable behavior--these days. The conduct of legislators, educators, corporations, and outdoor recreationists are centers of public concern. In 1979, the National Conference on Outdoor Ethics determined that the problems of private landowners caused by unethical recreationists needed attention at national, state, and local levels. In Virginia, responsible sportsman organizations, educational institutions, and agencies founded Operation RESPECT specifically to encourage good conduct among sportsmen and to reduce landowner problems.

What should landowners expect from ethical sportsmen? The code of conduct promoted by the Operation RESPECT council states that supporting sportsmen will:

1. Respect the landowner's property--hunting, fishing, trapping, or otherwise using it only when and where the landowner approves;

2. Accept full liability for their actions and persons while on the property;
3. Respect nature, taking every precaution against littering and fire;
4. Respect the game, fish, and firearms laws; and
5. Respect fellow outdoorsmen, observing all safety precautions and the traditions of good sportsmanship.

This code is stated on the Operation RESPECT permission card, shown in Appendix 1 and available free to landowners. The landowner who discusses these standards, provides specific information about his needs and how he expects the sportsman to use and care for the property, and encourages individuals to sign the cards in his presence will have far fewer problems than landowners who assume that all recreationists will behave themselves.

Managing Access to Private Lands

Recent research on landowner--sportsman relations conducted at Virginia Tech documented that 90 percent of landowners in the central piedmont region permit hunters--usually family, friends, and local people--access to their fields and woods. Most of what follows applies to landowners who want to cooperate more effectively with sportsmen. However, a significant number of Virginia landowners would rather prohibit sportsman use of their lands. These property owners should (1) post their boundaries (see section on posting), (2) restrict vehicular access to remote boundaries by erecting fences or gates or by planting trees or hedgerows, (3) consistently deal with potential users, and (4) notify both the local game warden and sheriff that their lands are closed to recreational use.

The positive approach to working with recreationists involves managing access. Providing limited roadside parking at designated access points discourages uninvited parties, littering, and vandalism and encourages reasonable distribution of desirable recreationists.

Once the location and extent of access has been decided, the landowner then decides who may have access. There are several options available and their pros, cons, and consequences are discussed below.

Option 1. Allow open public use.

This option entails no effort or expenditure in posting. Users of unposted land must have at least verbal permission from the landowner, but it is difficult to enforce the law. Court records indicate that landowners are often unsuccessful in prosecuting trespassers. Also, unposted lands are probably subject to more trespass, other property abuses, and game law violations than posted lands. Although it is possible to charge user fees for access to unposted land, in all practicality, income from recreationists cannot be generated from open lands. Finally, uncontrolled public use of private lands may decrease the quality and quantity of recreational opportunities for the landowner and his friends.

Option 2. Permit family, selected friends, neighbors, and responsible sportsmen who ask.

This option involves posting, issuing written permission cards, and prosecuting trespassers. The landowner should require all non-family users to carry permission cards. If the landowner desires, inexpensive, colored plastic badges may be obtained and guests required to wear them. The landowner can designate certain sections of the property by color and distribute hunters accordingly. Game wardens need the support of landowners to successfully prosecute trespassers .

The obvious advantages of granting written permission and posting include better control of recreationist pressure and reduced probability of property and game law abuses. The permission card should include not only room for the name of the user, signature of the landowner or his representative, validity dates for the permit, but also a statement that the permit holder will conduct himself ethically and assume liability for his actions and personal safety. An example of a permission card available free to landowners is shown in Appendix 1.

Wildlife management objectives can be accomplished by regulating the number of permits and their use. For example, farmers who suffer deer damage should grant enough permits to insure a substantial harvest of deer each year. The number of permits issued and the number of deer harvested depend on a complex of factors, including the size and nature of property, the skill and number of hunters, the number and density of deer, season length and bag limit for bucks and antlerless deer, and the weather. The Virginia Commission of Game

and Inland Fisheries District Biologist will assist landowners in estimating deer densities and the number of permits to issue. The address and phone number of the Commission are provided in Appendix 2.

Property owners can require all hunters to check-in before and after they hunt by holding their permission cards when they are not in use. This requirement will also provide an accurate tally of the game harvested which can be used to adjust the number of permits to issue the next season. The check-in system also provides an ideal way for the property owner to distribute hunters. Good distribution of hunters results in greater safety, enhances the quality hunting experiences, and increases the probability that trespassers will be caught or discouraged.

The check-in/check-out system can be refined further to promote fairness among permit holders. Permits can be made valid for only two days per week, which would balance the access of hunters who could come every day with those who can hunt only on weekends and holidays .

Particular attention has been paid to this access management option because most Virginia property owners want to share their hunting opportunities with friends, neighbors, and responsible sportsmen. No money changes hands here, but a fund of goodwill, reasonable game harvests, quality hunting experiences, and good control of access and sportsman conduct results from granting permission to selected guests. Conservation easements granting public recreational use by permit on private lands can be added to the deed. Such easements can amount to substantial savings in land taxes. Also, the ideas expressed above apply with slight changes to accommodating fishermen, campers, picnickers, hikers, and other recreationists. Specific assistance in working with these and other specialized recreationists is available from the Virginia Commission of Outdoor Recreation. (See Appendix 2 for their address and phone number.)

Option 3. Lease recreational access to clubs or associations.

Landowners who lease recreational rights usually charge, as a minimum, enough to pay taxes. If the tract is large enough to attract and hold an organization of sportsmen, the landowner can reserve recreational rights for his family and perhaps a few friends and still obtain financial and security benefits from leasing.

Several neighbors with small tracts of forested land can band together to attract a hunting club. The lease agreement should be viewed as a contract, with the responsibilities of both parties spelled out in detail.

A model lease agreement with a hunting club is presented in Appendix 3. Note that the club is required to pay in advance for the lease, provide the landowner with a current certificate of insurance for its members, post the property, pick up all litter, stay off roads in wet weather, help put out fires, keep a record by species of each year's wildlife harvests, and obey all game laws. The landowner is specifically released from liability for the safety and actions of the sportsmen, although the landowner remains liable for willful or malicious failure to warn against hazardous conditions, uses, structures, or activities.

Locating a responsible sportsmen's club is the key to successful leasing. Sources of information on prospective clubs include your local game warden, adjoining neighbors, and officials of forest industries holding tracts in the area. Also, the property owner can advertise in local and city newspapers. Checking with neighbors can help avoid territorial disputes among hunting clubs, especially if the property to be leased is surrounded by lands leased to other clubs.

Criteria for selecting a club that will respect the landowner, the property, the game laws, and the wildlife include:

1. The club should be well organized. Good organizations have a name, elected officers, bylaws including a code of conduct, and insurance for their members. Such organizations tend to be dependable, easy to communicate with, and honorable.
2. The group should have a reasonable number of members. The ratio of available land to the number of hunters should be adequate to provide safe and successful hunting. The acceptable ratio of hunters to land area varies with the game hunted and the type of wildlife habitat. Rough guidelines for quality hunting are 1 hunter per 25 acres for deer, 1 hunter per 200 acres for wild turkey, and 1 party of hunters per 100 acres of waterfowl habitat. Clubs may have more members than these suggested densities will permit on the land, but the density ratio will probably not be violated because the individual members will have different amounts and distributions of time available for hunting.

3. The club should provide references. Established clubs can be checked by contacting game wardens and other landowners who have permitted club use. New clubs can be checked by investigating a sample of individual its members.

In addition to these basic criteria, contact with the club will be more convenient if some members are local people. Also, clubs should be affiliated with state or national organizations that endorse high standards of sportsmanship and support wildlife conservation.

As with any contract, a lease agreement with an association or club is only as good as the relationship between the landowner and the group. The club should arrange to meet with the landowner long before each hunting season to discuss any changes that are needed or requested.

To the question, how much should the lease cost?, there can be no simple answer. Owners of extensive waterfowl habitat, river and stream access, or extensive tracts of land with large populations of deer, wild turkey, and other highly prized wildlife may realize some profit after paying their taxes and wildlife management costs.

There are several advantages of leasing recreational rights to responsible sportsman organizations. Aside from income, the landowner gains valuable assistance in catching trespassers, preventing property damage and littering, posting the land, controlling the harvest of game, and preventing and suppressing of forest fires. Also, close friendships often develop between landowners and club members.

Option 4. Permit daily use by the public for fees.

This alternative is used by owners of dove shooting fields, by operators of upland gamebird and waterfowl shooting preserves, and owners of fishing ponds and campgrounds. The owner posts and patrols his lands, prosecutes violators, and issues written permits in exchange for fees at a business office or desk at the only public entry to the property. The amount to charge is determined by operator costs and recreationist demand. Heavy public use demands access to drinking water, rest facilities, first aid kits, litter receptacles, adequate parking facilities, and supervision of users. Intense public use of private lands for fees greatly increases the potential for injury to recreationists and damage to their

property. The commercial operator should consult his lawyer and insurance agent to be sure of his liability and insurance coverage.

Option 5. Form a landowner cooperative with neighbors.

Many landowners share their hunting and other recreational opportunities with neighbors and friends. In a cohesive rural community, no one wants to be the first to put up posted signs and break the unwritten agreement that neighbors share hunting rights. However, in a local area where trespass is frequent and there are already enough hunters among neighboring landowners and their families and friends to hunt the area effectively, a landowner cooperative can be the answer.

Neighboring landowners should get together well before the next hunting season and make the important decisions. Ideally, the cooperative should include all owners in a locality. In effect, the landowners form a hunting club and can incorporate just as do other sportsman clubs. The members adopt a standard sign and posting system for all property boundaries. A map of the cooperative is drafted, showing all boundaries, roads, and safety zones around residences and work buildings. Permit cards are issued for use by members and their families and friends (See Appendix 1). The permission cards available free from Operation RESPECT will do the job. Some cooperatives may choose to let a limited number of other responsible sportsmen join for a fee. A formula for sharing the costs of signs and wildlife management is developed. Members agree to help each other patrol the lands for trespassers and support prosecution of trespassers and violators of game laws.

The landowner cooperative can help build a sense of community among rural landowners. This can be an especially important consideration for the absentee landowner who is not present to protect his property rights on a daily basis. To the individual landowner, the cooperative means foregoing income that might be paid by an outside sportsman organization in return for securing high quality hunting opportunities.

Landowner cooperatives need not be limited to managing hunting opportunities. The cooperative can decide to offer local scout troops, natural history clubs, canoeists, campers, and school groups the use of certain areas. The maps can show where various recreational activities are allowed. The cooperative should establish ground rules for obtaining permission, to include the names of

members authorized to approve the activity. When the different demands for recreational use are anticipated, management of guest recreationists is not overly burdensome. After all, most rural landowners enjoy hosting responsible people.

Posting

State law (Virginia Code Section 18.2-132) forbids hunters and fishermen to enter private lands without permission from the landowner. Although verbal consent is required for use of unposted lands, this provision is difficult to enforce. The landowner who wants effective control of access will have to post. Hunting, fishing, or trapping on posted land without written permission of the landowner is a misdemeanor punishable by a fine of not more than \$250.00 or by confinement in jail for not more than 30 days, either or both (Virginia Code Section 18.2-134). Posting laws are enforceable by game wardens, sheriffs, and all other law enforcement officers of Virginia.

Persons who own land in those counties in western Virginia that require big-game hunters to purchase animal damage stamps may have difficulty collecting for wildlife damages if hunters are excluded. Interpretation of Virginia Code 29-92.5 varies from county to county, so landowners should consult county officials before posting to ensure their eligibility for damage payments.

The landowner needs more than signs to post his property effectively. The posting strategy should include a standard sign that accurately conveys the landowner's policy on recreational use, systematic placement of signs along the boundary, routine inspection and replacement of weathered or vandalized signs, and a commitment to patrol for and prosecute violators. There is little point in conducting a half-hearted posting campaign because trespassers will detect a bluff and continue their use of the property.

In Virginia, the sign need only say POSTED to be legal. However, more information is desirable. If the land is closed to all trespassing, then a simple NO TRESPASSING sign will do. After you have established a record of successfully prosecuting trespassers, the trespassers in the locality will associate your sign and name with the fact that you mean business. If you limit hunting or other recreational activities to family, friends, and selected individuals, buy signs that read "POSTED, no hunting (and/or other recreational activity) without written permission" and give your name and address.

Signs that convey positive messages are less likely to be vandalized than signs that are negative. If you have leased hunting rights to a club, then the club should purchase signs saying "POSTED, hunting rights leased by XYZ Hunt Club, no hunting without written permission." The landowner may wish to control the wording of club signs. A landowner cooperative should adopt a standard sign not unlike that used by a hunting club.

Cardboard, fabric, plastic, and aluminum signs with standard or personalized messages are available from local or mail order suppliers. According to George Paduda, in the July, 1981, issue of *American Forests* magazine, the best long-run investment is the aluminum sign. Tack the sign to a board and then mount the board 10 to 12 feet high in a tree, using aluminum nails. Paduda recommends leaving one-half inch of the nail out to accommodate tree growth. Aluminum nails will neither stain the wood nor ruin saw blades. Also recommended are the use of a stepladder to install the signs and a pruning saw to remove branches that obscure the sign. Spraypainting trees with a bright color along the boundary line is a good idea too. Signs should be displayed conspicuously along the property boundary and installed well before the hunting season.

The task of enforcement follows sign installation. Inform the game warden and other local law enforcement officers that your land is posted and that you and those to whom you grant permits and lease agreements will support prosecution of violators. During the hunting season the officers are extremely busy; but they will make every effort to respond to a call for help from a credible landowner.

The landowner or his representative should not take the risk of personally apprehending an armed trespasser. If a trespasser is operating a vehicle, write down the vehicle license plate number and its make, model, and color and note the date, time, and location. If a trespasser was observed, a name or description of the person is helpful. Call the warden or other local enforcement officer immediately.

During the hunting season wardens are almost impossible to reach at home, but they can be reached by calling the county sheriff, who will relay your message by radio. Also, while on the road, game wardens monitor CB Channel 9. All Virginia law enforcement officers are empowered to enforce the trespass law.

Concluding Remarks

In Virginia, great opportunity exists for bringing together landowners and ethical sportsmen. Positive management of access results in improved recreational opportunities and benefits landowners. Landowners and their families feel more secure when they know who is on their land and where they are. Property damage and littering will be reduced. Forest fire problems will be reduced. Permitted guests will help post boundaries and assist preventing trespass. Wildlife populations, especially deer herds, will be better managed through controlled harvests. New friendships will develop. And perhaps, landowners may obtain additional income from permit and lease agreements.

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Appendix 1: Operation Respect Permission Card

Operation RESPECT (P.O. Box 11104, Richmond, VA 23230-1110) will provide cards in wallet size for permitting hunting or fishing. Either of these cards can be modified by a simple word change to permit trapping, picnicking, boating, or other recreational activities.

Appendix 2: Sources of Assistance

Commission of Game and Inland Fisheries, 4010 West Broad Street, P.O. Box 11104, Richmond, VA 23230-1110; telephone (804) 257-1000

Commission of Outdoor Recreation, 8th and Franklin Street, Richmond, VA 23219; telephone (804) 225-3011

Operation RESPECT, P. O. Box 11104, Richmond, VA 23230-1110

Virginia Cooperative Extension Service. Offices in county seats and city government buildings, and in the School of Forestry and Wildlife Resources, Cheatham Hall, Virginia Tech, Blacksburg, VA 24061;

Division of Forestry, Box 3758, Charlottesville, VA 22903

Appendix 3: Model Lease Agreement

*(Please note: The following model agreement should **not** be copied from this publication word-for-word and used. It must be adapted to a specific situation by the landowner. Consultation with an attorney is recommended.)*

Sir or Gentlemen: I, (name of landowner, lessor,) for the sum of \$_____, payable in advance, grant to (name of organization or individual, lessee,) the right to hunt and shoot, subject to the stipulations and conditions hereinafter set forth and only at such times as hunting and shooting are permitted by the laws and regulations of the United States and the Commonwealth of Virginia in force and effect, on the tract or tracts of land described as follows: (Description of tract - county, road #, deed #, acres, other data) STIPULATIONS AND CONDITIONS OF THIS LEASE AGREEMENT:

1. If the lessee is an organization composed of several members, the terms of this lease and its stipulations and conditions shall apply to each and every member. The terms of this lease and its stipulations and conditions shall also apply to any and all guests of the organization and its members.
2. If the lessee is an organization composed of several members, the term “lessee” shall apply to the organization and to any or all of its members.
3. The rights herein granted are restricted solely to hunt and shoot.
4. Hunting and shooting are prohibited within 200 yards of any occupied dwelling or within any designated safety zone.
5. The right to hunt and shoot is subject to any rights that the landowner may care to exercise over the Lands. Agricultural and forest management activities will take precedence over hunting activities.
6. The lessee will post the boundaries of the leased property with durable signs that include the name and address of the lessee.
7. The lessee will exercise due care to prevent forest fires on the property; will not cut, use, or destroy timber growing on the leased lands; and will not make or suffer any waste thereon.
8. The lessee will extinguish any fires on the leased land, without cost to the landowner, if the fire occurs when you are using the tract.
9. The lessee will conform strictly with local, state, and federal laws and regulations governing hunting and shooting; and the lessee will report all violations of laws and regulations, and assist law enforcement officers. If the hunting season begins after the date this lease commences, or ends prior to the termination of this lease, the term of this lease will be reduced to conform with applicable regulations.
10. If the lessee is a club or other organization composed of several individual members, each individual member is bound by the terms of this lease and its stipulations and conditions, and failure to comply will subject the club or organization to liability under the provisions of Paragraph 11 herein. All members shall have in their possession a membership card valid for the current season listing his name or her and signed in ink by the club president or his representative (see Appendix 1) . Others using the property with the permission of the club or organization will be issued a signed card granting permission to hunt and shoot on which card the permittee will indemnify the lessor according to provisions of Paragraph 11.
11. The lessor assumes no responsibility for the safety of the lessee in the exercise of the rights granted by this agreement. The lessee hereby assumes all such responsibility. The lessor shall not be liable for any injury or death incurred by the lessee either while on the leased land or while making use of rights-of-way to or from the leased land or while making use of any transportation facilities which may be provided by the lessee, from, or

over the leased land. The lessee will indemnify and hold harmless the lessor from and against any claim, loss, cost, or damage whatsoever caused by or arising from the operations of the lessee on the leased land or failure of the lessee to comply with any of the conditions of this lease, including failure to obtain all necessary signatures as set forth in Paragraph 10 herein. Each member of the lessee organization will be jointly liable to indemnify and hold the lessor harmless pursuant to this Paragraph 11.

- 12. Any and all camp sites, club house grounds, or gathering places on the property shall be kept free of litter. Receptacles for trash may be placed within the leased areas and emptied by club members at the county landfill or in county-serviced dumpboxes.
- 13. Vehicles shall be parked in designated areas. Use of roads shall be restricted to dry weather conditions. The lessee shall honor all locked gates.
- 14. Should the lessee fail to comply, in the opinion of the lessor, strictly with the terms of this lease, the lessor reserves the right to cancel this lease forthwith without any liability whatsoever.
- 15. The lessor may cancel this lease even though the lessee has complied with its terms; but the lessor will refund to the lessee the proportionate part of the \$ _____ paid, as the same shall bear to the unexpected period, without further liability whatsoever to the lessor.
- 16. Should the lessor elect to cancel this lease under Paragraph No. 14 herein, a letter addressed to the lessee (president of the leasing organization), cancelling the lease, will be accepted as sufficient notice by all parties herein referred to.
- 17. Unless cancelled as herein provided, all rights granted in and by this lease shall cease and terminate on _____.
- 18. As an indication of acceptance of the stipulations and conditions herein, the "Acceptance" will be signed below and unless or until this lease is executed by the parties hereto, and the \$ _____ as herein provided paid, the landowner is in no way obligated under the terms and conditions hereof.

Signed:	_____	(Date)	_____
(Lessor)	_____	(Date)	_____
(Lessor)	_____	(Date)	_____
(Lessor)	_____	(Date)	_____
(Witness)	_____	(Date)	_____
(Witness)	_____	(Date)	_____
(Witness)	_____	(Date)	_____

*NOTE: If the leasing organization is incorporated, the current president can sign for his members; but, if the leasing organization is an unincorporated association, all members must sign the lease.