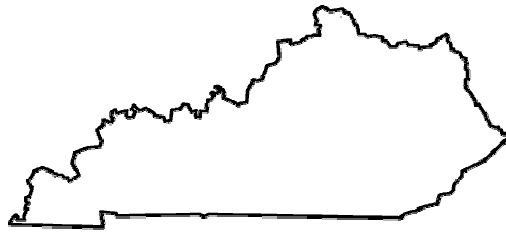




A Kentucky Cave Owner's Guide To Liability



Congratulations! You own a cave. Caves are more than holes in the ground, they are an important natural resource; containing beauty, flora and fauna, a unique ecosystem, and mystery. Because you own a cave, you may find from time to time that people seek entrance to your land. Many land owners and cave owners become concerned, and rightly so, that they may be subject to liability when persons come on their land. It is no different for a cave owner. In fact, you may be more worried about liability because you own a cave. This brochure is to give you information about your cave and how it may affect potential liability.

The Kentucky legislature passed a specific and clear cave owner liability statute.

A statute is a law, passed by our state government, written in books, which governs every person who lives in the state or comes in the state. It is clear and short and everyone must follow it. In **1988, our Kentucky general assembly passed a statute, a law, which mandates that a cave owner shall not be held liable for injuries sustained by any person using the cave for recreational or scientific purposes if no charge has been made.** KRS 433.883.

This is a significant and important law. Basically it means, if you don't charge for persons to enter your cave, you can't be held liable if they get hurt. This law helps cave owners a great deal and should allow you to relax about the possibility of being sued. However, a primary part of the law is that you aren't responsible as long as you don't require payment from anyone using the cave. If you charge or ask for money or other payment, the statute will not protect you. When someone charges money for persons to use their cave or land, he/she becomes a business and different laws apply. Those will be discussed later in this brochure.

The Kentucky General Assembly, our state government, passed this law to encourage cave owners to allow interested and curious persons entrance to their caves without risk. Under

this law, all risk is placed upon the person entering the cave. It is like a person swimming in the ocean. When a person swims in the ocean, he does so at his own risk, and if he gets hurt, can only blame himself.

There is also a similar law to that involving cave liability. It is called the Recreational Use Statute. KRS 411.190. This law does not affect caves but other recreational land use. In a nutshell, it says that an owner of land owes no duty to keep his land safe for recreational purposes or to give any warning of a dangerous condition, structure, condition or activity to persons who use the land for recreation. Recreational purposes include, but are not limited to: hunting, fishing, swimming, boating, camping, hiking, picnicking, nature study, water skiing, etc. This statute only applies if a land owner does not charge for use of his property. It further does not protect an owner if he acts willfully or maliciously (for example, on purpose, intends to hurt somebody, knows for sure that his acts or failures to act will injure someone, or does something with a bad heart).

As stated earlier, as long as you don't charge for use of your cave, you are protected from liability. If you charge, a different set of laws apply. When you invite someone onto your land and charge them for its use, they become a "business invitee". A business invitee is someone invited onto your land for mutual benefit. This means that if you charge, the person is a business invitee because you get benefit - make money, and he gets benefit - gets to use your land. The status of someone using your land is important because it determines whether you have exercised reasonable care in preventing injury. When you charge for use of your land, you have a duty to discover the existence of dangerous conditions on your premises and either correct them or warn against them. **Johnson v. Lone Star Steakhouse & Saloon of Kentucky, Inc.**, Ky., 997 S.W.2d 490 (1999).

This same rule applies to a cave - if you charge for cave entrance or charge to take persons caving. There are two primary cases in Kentucky involving persons who have gotten hurt after they paid to go in a cave. Those cases are reported cases and thus are the law, just as a statute might be. Once a case is appealed and published, it becomes precedent and therefore is also the law of the land. The two cases involving injury after a person paid to go in a cave are **Gray v. United States**, 848 F.2d 190, 1988 WL 56719 (6th Cir. Ky.) and **Coughlin v. T.M.H. International Attractions, Inc.**, 895 F. Supp. 159 (W.D. Ky. 1995).

In the **Gray** case, Thelma Gray and her family embarked on the "Frozen Niagara" tour. As Mrs. Gray's group neared the end of the tour, they came upon a decline in the path. As she walked down the decline, Mrs. Gray "held to the rail lightly". Mrs. Gray testified at trial that there was no sign warning of the decline and no warning of possible wetness. As she walked down the decline, Mrs. Gray slipped and fell, sustaining a broken elbow. During the tour Mrs. Gray was warned by her guide that there were slippery spots in the cave. There was also a sign posted outside the cave warning that wet and slippery conditions could exist.

The issue of the case was whether the federal court made a mistake in finding that Mammoth Cave was not negligent. The Court found it important that under Kentucky law, Gray was an invitee, whose entry into the park benefited Mammoth Cave's business. **Hardin v. Harris**, Ky., 507 S.W.2d 172 (1974). Thus, Mammoth Cave had a duty to warn visitors of any artificial or natural condition not reasonably safe and not known to them. Since Gray had been to Mammoth Cave and Carlsbad Caverns several times, she knew that caves have wet areas. If she forgot, then the sign outside the cave and the warning given by her guide, should have reminded her. Since people expect caves to be as untamed as possible, Mammoth Cave was not required to transform the incline into steps. The Court held, essentially, that it was not negligent in causing Mrs. Gray's fall.

There is a case in Kentucky, however, where an adventure company and cave owner were held liable for a customer's death. **Coughlin v. T.M.H. International Attractions, Inc.**, 895 F. Supp. 159 (W.D. Ky. 1995). In that case William Coughlin and some friends traveled from Illinois to Buzzards Roost Cave in Cave City, Kentucky. They went on the "historic tour" of the cave and while there, learned of the "wild cave" tour which was offered. They decided to go and paid T.M.H. for the tour. There were seven persons in the tour but only two hand held flashlights were provided. No helmets were provided, no further warnings were given. Before embarking on the tour, the guide asked each to sign a release which read as follows:

We the undersigned hereby accept the following special conditions and in recognition that speleology is an inherently dangerous recreational activity, we voluntarily assume all risks and shall indemnify and hold the owners, operators, and employees of Buzzards Roost Historic Cave harmless from all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the privileges granted by this permit including damages caused by or resulting from the sole or joint negligence of the owners, operators, or employees of Buzzards Roost Historic Cave. Additionally, I accept and understand the aforementioned conditions apply to any minor we escort.

During the tour William Coughlin and his group were abandoned by their guide so that he could make a phone call. When the guide did not return, they were left to find their own way out and to climb alone up a 17 foot rope ladder. William Coughlin fell during his attempt to climb the ladder and hit his head, causing it to bleed profusely. After the guide was told about the injury, he returned to the cave, but without any first aid supplies. William Coughlin became wedged in a rock formation and bled to death after seven hours.

The Court held that the owners, operators and adventure group were negligent and liable for Coughlin's death. The spelunkers should have been told what to expect on the tour, the guide should not have abandoned them, they should have been provided helmets and lights (or required to have their own), when the guide returned he should have brought first aid equipment and he should have summoned help immediately before returning to the cave.

The Court also advised that the so called release form was not valid and did not shield the cave owners and operators from liability. First, although in certain circumstances, one may be

released of liability for ordinary or gross negligence, one may not be released of liability for willful and wanton negligence. Second, such release forms are not generally favored under our legal system. Third, it is not in the public's interest to release such negligent behavior from liability. Fourth, Buzzard's Roost Cave, the adventure company and Coughlin's group were not on equal footing. The cave owners and operators knew of the dangers which awaited customers. Coughlin's group were not experienced cavers and did not what lurked in the shadows.

The Court relied on prior cases and found that there are several factors to look at when considering the validity of a release. They are:

1. The voluntary signing of the release.
2. The equal bargaining power of the parties.
3. The public interest in the activity.
4. The recreational nature of the activity.
5. The knowledge and familiarity of the injured party with the activity.

In Coughlin's case, the Court found that he voluntarily signed the release but was not on equal footing with the Defendants. He was not an experienced caver and knew little about spelunking. He did not know of the dangers in the cave and the release read more as an advertisement than warning of specific risks.

In conclusion, if you charge for use of your cave, run a commercial cave or allow others to charge for your cave's use, follow these guideline rules to help avoid liability:

- Make your cave as safe as it can be.
- Post signs outside the cave of specific hazards.
- Provide proper equipment to customers or require that they have their own.
- Require the tour guide to give warnings of what dangers the group should expect to encounter.
- Require each customer to sign a well written release which clearly sets out the kind of dangers the spelunker could find.

Frequently Asked Questions By Cave Owners

Q. Can I be held liable for injuries if I don't charge for persons to use my cave?

A. No. An important Kentucky law protects you from liability for injuries sustained by any person using the cave for recreational or scientific purposes if no charge has been made. KRS 433.883.

Q. What do you mean by “liability”?

A. Responsibility, that state of being bound or obliged in law or justice to do, pay, or make good something.

Q. Since this law protects me from liability if someone is hurt using my cave, does that mean I am required by law to let him use it?

A. No, the land is still yours. You have the right to grant or deny permission for persons to come on your land and use your cave.

Q. If a person comes onto my land and into my cave without permission, considering Kentucky law, can I make him leave?

A. Of course. You have all rights at your disposal which are protected by the concept of private land ownership and Kentucky and Federal law.

Q. Who do I contact with questions?

A. Call your attorney or insurance agent. You may also contact the Rockcastle Karst Conservancy at www.rkci.org.

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Caveat - this brochure is not intended as legal advice or as a substitute for legal research by your own legal professional. Contact your own attorney if you have specific legal questions about your land. The above attorney will answer general legal questions regarding land ownership and liability but can not give you legal advice.

The Rockcastle Karst Conservancy is 501(c)3 tax-exempt non-profit organization dedicated to the education and preservation of caves and karst in the Rockcastle County, Kentucky region. Visit us at: www.rkci.org