Regarding Private Use Airfields:
Clarifying State Recreational Use Statutes

"Can I land at your private airstrip to visit a friend?"

This question is most often answered, "Sorry, but no." This is because private use airstrip owners worry about lawsuits. And really, who can blame them?

But in each state there is a law to protect landowners from liability lawsuits when others are using their land for recreation. While these Recreational Use Statutes (RUS) will not prevent lawsuits, the outcome of the lawsuit is more likely to be in favor of the landowner.

But isn't recreational *aviation* covered in the RUS? In nine states aviation is clearly listed in the statute's definition of "recreation." They are Montana, Idaho, New Mexico, Arizona, Tennessee, Maine, New Hampshire, Massachusetts, and Pennsylvania. In other states where aviation is not specifically included in the list of recreational activities the issue is not so clear. There is usually a clause indicating that the statute covers recreational activities "including, but not limited to" a whole list of activities. So an owner of an airstrip may be confident that the RUS provides protection from liability for such listed activities as hiking, hunting, fishing, snowmobiling, caving, etc. But he is not so sure about recreational *aviation* activities on his land.

This uncertainty stems partly from the highly regulated nature of aviation. To clarify these statutes it is necessary to add *aviation* to the other listed recreational activities. Our experience has shown that once such amendments to existing statutes have been made, private use airstrip owners are much more willing to allow public access to their private airfields. And promoting public access to private land for recreation is the very purpose of the RUS. There is also an economic benefit to the state with such enhanced activity.

An important point to understand is that the FAA often determines that an airstrip is suitable for emergency landings, and will then place such suitable airstrips on air navigational charts. This is to provide pilots and air traffic controllers with important information in the event of an in-flight emergency. The airstrip is designated on the charts as "private use," meaning that prior permission from the landowner is required for aviation operations other than during an emergency. Some states require the registration of airstrips, some do not.

Since this "private use" airstrip information is available to the public, the landowner now can be easily contacted by pilots requesting permission to land on the charted airstrip. However, some pilots land aircraft without even asking permission. The landowner has a dilemma since his airstrip information and location is publicly and prominently made available by the FAA. If an aircraft lands, with or without permission, the landowner has doubts about the liability protection afforded by the recreational use statute. What is an airstrip owner to do if aviation is not clearly included in the RUS? Most airfield owners do not grant permission for fear of a lawsuit. And most airstrip owners worry that they may be sued even if they do not grant permission and someone decides to land on their airfield.

As a result a great deal of airport infrastructure, which might be utilized to the economic benefit of the State, is unused.

The recreational use statute is a landowner protection law to purposefully keep private lands opened for public recreational use. We view the addition of "recreational aviation activities" to this statute as a reasonable manner in which to clarify the protection that the law affords to landowners. Pilots will still need, and for safety reasons ought to request permission of the owner to use the airfield. But this additional language will make it clear that landowners have the same protection from liability actions arising from recreational *aviation* activities that they have during other recreational activities.

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