

LIVING IN VERMONT

PRIVATE PROPERTY RIGHTS | HUNTING RIGHTS

PROPERTY RIGHTS

In Vermont, property rights are constitutionally protected. They are mentioned in the opening of the Vermont Constitution, A Declaration Of The Rights Of The Inhabitants Of The State of Vermont, CH I., Articles 1, 2, 4 and 9.

HUNTING RIGHTS

Did you know that hunting is also a constitutionally protected right in VT? This right is found in CH II., General Provisions, Section 67.

POSTING LAND

Despite the constitutionally protected property rights, Vermont law requires property owners to post their boundaries in order to keep the public off their land. The details of what's required to be legally posted can be found in 10 V.S.A. Section 5201.

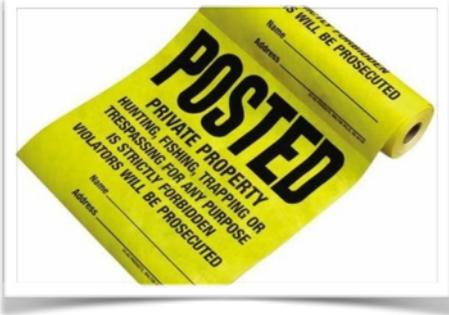


21st century balancing of VT's constitutionally protected rights

In Vermont, property rights are constitutionally protected. In fact, they are mentioned several times in the opening of the VT Constitution, A Declaration Of The Rights Of The Inhabitants Of The State of Vermont, CH I., Articles 1, 2, 4 and 9.

The Agency of Natural Resources, Vermont Fish & Wildlife Department's website rightly recognizes what is set forth in the VT Constitution, namely "...allowing hunting or any public use on your land is, ultimately, a privilege only you can grant."





Property Owner Burden

Per 10 V.S.A. Section 5201, notices shall:

- be erected upon or near the boundaries of lands to be affected
- be erected at each corner
- be erected not over 400 feet apart along the boundaries
- legible signs must be maintained at all times
- legible signs must be dated each year
- owner or person posting the lands shall record this posting annually in the town clerk's office of the town in which the land is located, paying \$5 for this recording

Let's take a closer look at the language of the relevant sections:

"CONSTITUTION OF THE STATE OF VERMONT AS ESTABLISHED JULY 9, 1793, AND AMENDED THROUGH DECEMBER 14, 2010

CHAPTER I. A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

Article 1. [All persons born free; their natural rights; slavery prohibited]

That **all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are** the enjoying and defending life and liberty, **acquiring, possessing and protecting property**, and pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.

Photo: SHO Farm | Sanctuary at SHO rescued ducks



Article 2. [Private property subject to public use; owner to be paid]

That **private property ought to be subservient to public uses when necessity requires it**, nevertheless, **whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money**. [this is known as eminent domain - more on this in another post]

Article 4. [Remedy at law secured to all]

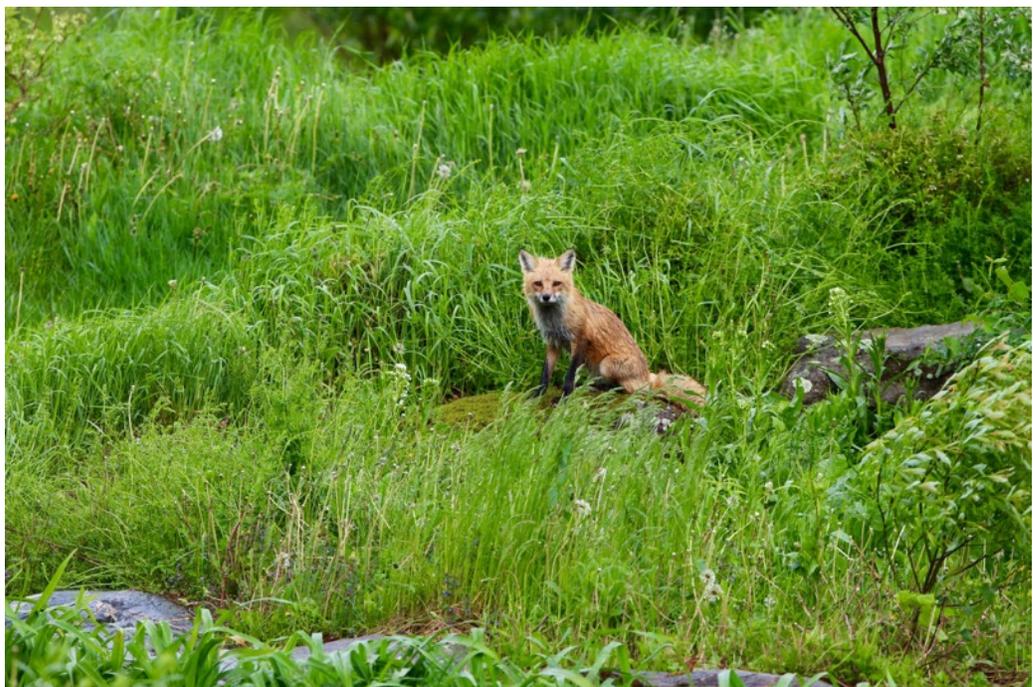
Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws.

Article 9. [Citizens' rights and duties in the state; bearing arms; taxation]

That **every member of society hath a right to be protected in the enjoyment of life, liberty, and property**, and therefore is bound to contribute the member's proportion towards the expence of that protection, and yield personal service, when necessary, or an equivalent thereto, but **no part of any person's property can be justly taken, or applied to public uses, without the person's own consent**, or that of the Representative Body, nor can any person who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if such person will pay such equivalent; nor are the people bound by any law but such as they have in like manner assented to, for their common good: and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.

CHAPTER II.**GENERAL PROVISIONS****§ 67. [HUNTING; FOWLING AND FISHING]**

The **inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed**, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly."



**Photo:
SHO Farm |
Wildlife
Preserve**

Interpreting The Law

As with all laws, interpretation of the authors' intent plays a significant role in application. The further in time we get from the writing of the document, the more difficult it is to determine intent. And, the further we get from the writing of the original document, the more things have changed — in some cases, changed so much as to make repeal or amendment of clauses necessary to reflect present societal values and needed protections.

For example, **Section 67 starts by stating “The inhabitants of this State...” — What was meant in 1793 by “inhabitants of this State”?** If, indeed, this right extends only to legal residents of VT, how many non-resident hunters are in violation? Is it illegal to issue hunting and trapping licenses to non-VT residents?

Section 67 only refers to hunting, not trapping. Did the original authors mean to limit this right to hunting? What's the legal implication of this? Do people use the two words interchangeably? Is that right? Fair? Constitutional? Overreaching? What happens to trapping activities if they are not constitutionally protected, especially on land not owned by the trapper?

Another example, **Section 67 states “...and on other lands not inclosed,...” — What was meant in 1793 by “lands not inclosed?”** Was the intention meant to be literal, referring to fencing of some sort? Would that be reasonable, practical, desirable today?

Does the modern day posting law meet the intention of “inclosed”? See 10 V.S.A. §5201(d) - does this imply that posting meets the constitutional use of the word “inclosed”?

Are there legal opinions answering these questions already?

**Photo: SHO Farm Duck Sanctuary + Wildlife Preserve | Lost Bear Hound in Farmstead
August 17, 2019**



Burdening Property Owners To Keep The Public Off Their Land - Time For A Change?

Despite the multiple citations to property rights in the VT Constitution, and reference to it on VT F&W Dept's website, **Vermont private property owners bear the burden of posting their property boundary to keep the public out.**

The governing law is 10 V.S.A. §5201 - <https://legislature.vermont.gov/statutes/section/10/119/05201>

Among other statutory requirements, notices “shall be erected upon or near the boundaries of lands to be affected with notices at each corner and not over 400 feet apart along the boundaries thereof. Legible signs must be maintained at all times and shall be dated each year.”

Landowners must also record their posting annually with the town clerk's office and pay \$5.

A bundle of 100 posting signs costs approximately \$22. For our nearly 1,300 acre property, accounting for its size and road frontage, nearly 500 signs are required.

The cost of the signs is the least significant of all, even with most getting ripped down within the course of the year and needing to be replaced. The bigger cost for us, and other large landowners, is in human labor/time posting and maintaining 2 square miles of boundary.

But even for smaller properties, posting poses challenges, especially if owners are elderly or disabled.

There's a lot that goes into posting your land. First, you have to know where your boundaries are — which is fundamentally important for all property owners. The boundaries will need to be well-marked and the person doing the posting will have to know how to identify boundaries. Some of our boundary is easy to access directly off roads, but other sections cross extremely steep and remote areas where access is via foot only. You need signs, a staple gun, and staples. Some people mount the signs to wooden boards for durability (this is more doable along roadways). Our boundary takes several days to post.

Many property owners have to incur the expense of hiring someone to post their land for them.

In light of VT Constitutional protection of property rights —

Why should private property owners have to take action to ensure the public stays off their land?

Shouldn't it be the other way around?

Shouldn't it be presumed that all private land is not to be trespassed upon or accessed for any activity without permission?

Shouldn't it be the burden of private property owners who want to invite the public onto their land to post an invitation?

I think burdening private property owners to invite the public to come onto their lands is far more in line with the entire legal framework.

I think it would create far less confusion about where hunters and trappers can go, and where they are not invited.

I think it would create far less visual pollution on the landscape caused by the most-often used posting sign - the bright yellow squares that dot VT's fields and hillsides.

Shouldn't property owners be free of unexpectedly meeting trespassing hunters, trappers, and their hunting hounds while out on their land — to enjoy private use in whatever ways they desire, free of threat, disruption and damage to themselves or their property?

What does all this mean for the future of Vermont — who will want to vacation here, live here, and how much will people be willing to pay for property if things stay the same?

What are your thoughts?

