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October 2014

Let's Make A Deal: Immunity For Water Management Districts In Exchange For Use Of Land

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Florida's five water management districts ("Districts") together own approximately 2.7 million acres of land. To protect Districts from liability for injuries occurring on these lands, the Florida Legislature enacted Section 373.1395, Florida Statutes, commonly referred to as the recreational use immunity statute. This statute generally protects Districts from liability for injuries occurring on land made available to the public for recreational purposes. It states in relevant part:

> [A] water management district that provides the public with a park area or other land or water area for outdoor recreational purposes, or allows access over or the use of district or other lands or water areas for recreational purposes, *owes no duty of care to keep that park area, district or other lands, or water areas safe for entry or use by others or to give warning to persons entering or going on that park area, district or other lands, or water areas of any hazardous conditions, structures, or activities thereon*. A water management district that provides the public with a park area, district or other lands, or water areas for outdoor recreational purposes, or that allows access over or the use of a park area, district or other lands, or water areas, *does not* by providing district or other lands, or water areas, *extend any assurance that such park area, district or other lands, or water areas are safe for any purpose, does not incur any duty of care toward a person who goes on that park area, district or other lands, or water areas, and is not responsible for any injury to persons or property caused by an act or omission of a person who goes on that park area, district or other lands, or water areas*.

§ 373.1395, Fla. Stat. (2009) (emphasis supplied).

This statute has enormous implications for Districts faced with negligence claims by persons injured while using district lands for recreational purposes such as hunting, fishing, camping, pleasure driving, and nature study, to name just a few. This immunity applies regardless of whether the claimant was an invitee, licensee, or trespasser. Further, it applies regardless of whether the claimant was actually engaged in an outdoor recreational purpose at the time of the accident or occurrence. And it applies regardless of whether the land on which the injury occurred was actually made available to the public at the time of the accident or occurrence.

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Importantly, there are two sets of circumstances under which this immunity would not apply. First, it would not apply where a District has made a charge for use of its lands or has engaged in an activity from which it has derived a profit from the patronage of the public (with certain limited exceptions). Second, it would not apply where a District has engaged in gross negligence or has caused a deliberate, willful, or malicious injury to a person or property.

The stated purpose of the recreational use immunity statute is to encourage Districts to make their lands available to the public for outdoor recreational purposes. Were it not for this statute, concerns about excessive liability would likely cause Districts to close their lands to the public, thus depriving Floridians of access to a priceless recreational resource. Indeed, if Districts were liable for every injury that resulted from a pot hole on one of the countless miles of dirt roads stretching across their lands, they would have little time or money for anything other than road maintenance. As it turns out, the recreational use immunity statute not only protects Districts, but also provides a great benefit to all Floridians. Those who use District lands for their own benefit simply need to exercise due caution.

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