

BAD GOLF SHOTS AND ADJACENT PROPERTY OWNERS

With the continuing growth of the golf industry and construction of new golf courses there is also an increase in the number of lawsuits seeking damages for personal injuries and property damage from golf balls.

Probably the area receiving the most attention and which has the potential for expanding the fastest is damage or injury to adjacent property owners. Decisions of courts in the past have upheld the defense of "assumption of risk" where the adjacent property owner built or purchased his home subsequent to the construction of the golf course. If the golf course was there first, he knew or should have known that errant golf balls could accidentally land on his property. However, some courts have found liability if the problem is acute, and the frequency of golf balls landing in the yard of the property owner could constitute a "nuisance" as this term is used by our Court. This term is defined as "The unlawful use of property causing material annoyance, discomfort or hurt to another person."¹ This is a matter of degree and liability will turn on the facts and circumstances of each particular case.

¹66 C.J.S. Nuisance Section 8 (1950 and Supp. 1987).

Another area that has caused concern is where natural barriers such as trees were in place when the adjacent property owner purchased the lot and built his home. The trees deflected most golf balls and very few balls landed in his yard. After severe storms or because of disease the trees were destroyed or removed, and with the natural barrier no longer there the frequency of the golf balls landing in the homeowner's yard increased drastically. The risk of injury or property damage also increased. The Courts have held that the fact that a person voluntarily comes within a nuisance by moving into a sphere of its injurious effects, or by purchasing adjoining property or erecting a residence or building in the vicinity after the nuisance is created, does not prevent him from recovering damages for injuries sustained therefrom, or deprive him of the right to enjoin its maintenance, especially where by reason of changes, the annoyance has been since increased.

Re-planting of shrubs and trees or creation of a buffer are ways the golf course can minimize the problem. In some cases, the golf course has had to change the layout of the hole to reduce the likelihood of errant golf balls causing injury or damage.

If you live near a golf course and experience a problem with errant golf balls, try first to encourage the golf course owner to take reasonable steps to minimize the problem. In most cases, responsible golf course owners realize that ignoring the

risk and potential liability can only make things worse for themselves in the future.

Dalton B. Floyd, Jr., Esquire
The Floyd Law Firm PC
15 Highway 17 South
Post Office Drawer 14607
Surfside Beach, SC 29587-4607
(843) 238-5141

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