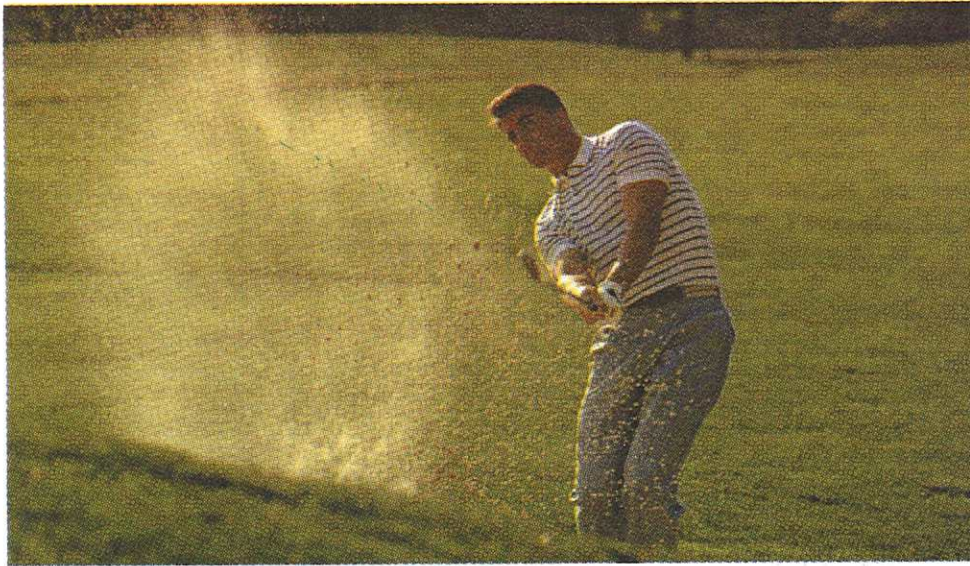


Hazards on the green

Fair warning offered on golf course community dangers



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Looking over the rolling fairways, sculptured bunkers and contoured greens, framed by wooded creeks and towering trees, the lure of a golf course community home is hard to resist — especially during the inviting days of spring. Designed to take full advantage of the visceral beauty of the Bluegrass landscape, most local golf communities hug the natural contours of the fairways and greens. As you ponder the rewards of golf course living, you might also consider the risks.

Over the course of history, courts have fashioned remedies for players and adjacent property owners when struck by misdirected golf shots. Typically, one who chooses to reside next to a golf course, receiving the social benefits and other advantages of country club surroundings, must accept the occasional invasion of an errant golf ball — so long as the design and

construction of the course and location of the trees, fairways and greens do not create an unreasonable risk of harm. Typically, course designers incorporate bunkers, mounds, trees or shrubbery to minimize the number of balls that would cross the adjacent owner's property line.

Shots that go awry are a risk that all golfers, even professionals, assume. As between golfers, there is an inherent risk of being hit by errant shots. Golfers and caddies need to be vigilant. As one court observed, if every ball behaved as the golfer wished, there would be little "sport" in the sport of golf.

A golfer is not an insurer of the safety of others and is only required to exercise ordinary care within the range of danger, including caddies and greens keepers. Although the zone of danger is not limited to the intended path of the golf ball, generally there is no duty to shout the customary warning "fore" when there is no

one in the line of play or to another player on an adjacent hole or fairway. Warning is only required for those who are in such a position that danger to them is reasonably anticipated. One Kentucky case denied recovery to a companion golfer struck by a shanked golf ball when he was standing at a right angle to the anticipated line of flight, 50 feet away from another golfer attempting to hook the ball around a tree.

Even the best golfers cannot avoid an occasional hook or slice. While a bad shot that causes injury does not of itself establish negligence, it may if the player has a propensity to shank shots. A player may be liable to either a companion golfer or an adjoining owner if he or she intentionally injures or was sufficiently reckless to be outside the ordinary activity of golf. An unannounced second tee shot (Mulligan) has been considered to be reckless. But the failure to yell "fore" or some other warning of an errant shot has been held not to be reckless or intentional conduct.

An adjacent owner would necessarily hear numerous warning shouts each day directed to other golfers and may start to ignore them. Where the injured person was in a place where he or she should have been safe and was aware of the player's intent to play the ball, a warning of "fore" has been found unnecessary.

Golf course owners and operators have a duty to design a golf course to minimize the risk that players will be hit by golf balls. Their duty to an adjoining homeowner is to design and maintain a reasonably safe golf course consistent with the risks inherent in the sport. An adjoining owner would have to show design or maintenance flaws that increased the risk above that inherent in the sport to recover damages.

To facilitate play, an easement may be

reserved in the golf communities' restrictions to permit golfers to enter upon the adjoining owner's lot to retrieve their wayward golf ball. The rules of golf, or club rules, dictate that the entering golfer not hit his ball from the adjoining owner's "out of bounds" yard. Golf etiquette would dictate that the player of an errant shot leave his or her card and offer to repair in the sill of a shattered glass window.

During sanctioned golf tournaments, some golf course community restrictions obligate adjoining owners to suspend construction activity, lawn maintenance and other noisy activities. Limitation of liability provisions are often included to protect the golf course operator for damage to adjoining owners caused by golf course patrons or golf balls. Redirection of the golf course community traffic flow during major tournaments may also be included.

Location can be key, as homes built within 150 to 200 yards of the right side of the tee box or directly behind or to the side of a green tend to be more risky. Heavy duty screens for windows, doors and decks may be one way to peacefully accommodate a home's proximity to the course.

Living on a golf course and living with golf balls necessarily go hand in hand. These invasions must be accepted by one who seeks to reside in the serenity and semi-isolation of the pastoral setting of a golf course community.

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