

How Can Landowners Deal With Trespassers?

- 1) Landowners should post “No trespassing” signs on their land, then there will be no question about notice to the trespasser. Posting is not required but it can serve as extra assurance, especially if problems and legal concerns arise.
- 2) A landowner can file a civil lawsuit against a trespasser to recover damages caused by the trespasser or to obtain an injunction against future trespassing by the named trespasser if repeated violations have occurred. A civil lawsuit requires that the landowner knows who the trespasser is. The landowner should consult an attorney to handle such a lawsuit.
- 3) A landowner can swear out a criminal complaint or warrant with the sheriff or prosecutor if he/she is able to identify the trespasser. In this case, the sheriff or other law enforcement officer is required to arrest the violator who will be tried in the county or municipal court for criminal trespass.
- 4) A landowner can call the sheriff or other law enforcement officer having authority in the area where the land is located. If an officer arrives and observes a violation of law, the officer is required to arrest the violator. The game warden has jurisdiction for hunting, fishing, and trapping violations and will make trespassing arrests related to those offenses. Officers will generally not arrest a trespasser unless the officer witnesses the violation.

This brochure is meant to be an educational tool and should not be perceived as legal advice. If you feel that you need more information regarding any trespassing dispute, please contact an attorney.

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Trespassing and Landowners



Introduction

Americans have always cherished their constitutional right to own and control private property. Now more than ever, farmers and other landowners are threatened by those who are and have the potential to be trespassers. This pamphlet will attempt to help landowners learn about their rights and obligations in regard to trespassing and property rights.

Trespassing Under Common Law

In common law, a trespasser is a person who enters upon the land of another without express or implied permission from the landowner or tenant. A trespasser can also be a person who, without authorization, goes upon the private premises of another person without any invitation or enticement by the owner or tenant purely for the trespasser's own purpose or convenience. Common law is mostly concerned with damage done to property by trespassers and speaks about the rights of landowners to recover money damages from trespassers. This must be done in a civil court action brought by the landowner against the trespasser.

Trespassing Under Ohio Statutes

Under section 2911.21 of the Ohio Revised Code, a person can be charged with a fourth degree misdemeanor if they do any of the following without the privilege to do so:

- 1) Knowingly enter or remain on the land or premises of another.
- 2) Knowingly enter or remain on the land or premises of another, the use of which is restricted and the person knows he/she is in violation of any such restriction or is reckless in that regard.
- 3) Recklessly enter or remain on the land or premises of another in which unauthorized access or presence is communicated by fencing or enclosures designed to prevent access, by verbal

communication, by posting in a manner that will reasonably come to the attention of potential intruders, and/or by a manner prescribed by the law.

- 4) Remain on the land or premises of another after being notified by signage or by the owner or occupant or their agent to leave the property or premise.

This statute applies to public as well as private land and applies to any person who is on land or premises owned by another when that person received permission to enter by deception. The penalty for those found guilty is up to 30 days in jail and a maximum fine of \$250.

Landowner Responsibilities and Liabilities

A landowner can and should know how to safely and legally deal with trespassers. A landowner should not attempt to detain a trespasser if that is the only crime observed. A citizen's arrest of a trespasser is not permitted in Ohio and if attempted could result in prosecution of the landowner. In other words, unless physical danger is involved, landowners should avoid possible problem situations.

Under Ohio law, a person entering the premises of another takes on a certain identity. He/she can be a business invitee, licensee, social guest, recreational user, or a trespasser. A landowner has the duty to use reasonable care to make their premises a safe place for business invitees. This responsibility is greater than the responsibility to other persons on the premises. The duty owed to licensees and social guests are nearly the same: the owner must refrain from intentionally injuring these persons and they must warn them of any unsafe conditions they might encounter. Landowners can not intentionally create hidden dangers which might injure these persons.

As for recreational users, Ohio statute provides that a landowner owes no duty to a recreational user and need not warn the user of unsafe conditions. Again, the landowner cannot intentionally create conditions on their land which would be dangerous to recreational users

without warning them of their existence. A landowner can now charge a fee to a recreational user and still retain immunity from liability. A landowner owes no duty to a trespasser except that the landowner cannot intentionally injure a trespasser; for example, by setting traps for the trespasser. Once a landowner knows that a person on his/her land has been injured, including a trespasser, that person must be given reasonable assistance. All of these duties or responsibilities involve civil liabilities; there are no criminal penalties involved.

Ohio has adopted an attractive nuisance doctrine that requires landowners to protect foreseeable child trespassers from dangerous conditions on the landowner's property. An attractive nuisance is an artificial condition that is dangerous yet attractive to children. Some examples of an attractive nuisance include a farm pond set up for swimming, an open swimming pool, a swing set, a tree swing, or something that could lure children into trespassing. For a landowner to be held responsible for an injury to a child based on the attractive nuisance doctrine, all of the following must apply:

- 1) The landowner must know or have reason to believe that children may trespass on their property,
- 2) The artificial condition must pose an unreasonable threat of death or bodily harm to children,
- 3) The children that are trespassing cannot understand the risk associated with the condition,
- 4) The need for the condition and the burden of eliminating the condition are slight compared to the danger it poses to children, and
- 5) The landowner has failed to exercise reasonable care in eliminating any danger related to the condition or to protect children that may trespass.

The outcome of each allegation or claim under the attractive nuisance doctrine will vary by case depending upon the facts surrounding each incident. This means that any violation of the attractive nuisance doctrine must be determined by a court of law.

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