The Do’s and Don’ts of Dealing with Trespassers on the Farm
What Landowners Need to Know
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Trespassing is a common problem for farmland owners, and one that raises concerns about liability. What can landowners do about trespassers? This bulletin provides guidance on actions owners should and should not take when dealing with trespassers on the farm.

What is a “trespasser” under Ohio Law?
Ohio Law defines a “trespasser” as a person who enters someone’s property for their own purposes without being authorized, invited, or induced to do so by the landowner or by the leaseholder, renter, occupant, or other person who has control over the property. Trespassing is a crime under Ohio law and can also be the basis of a civil lawsuit if there are damages that result from the trespass.

What is the duty of care owed to trespassers?
A landowner has a duty of care to trespassers, but the extent of that duty depends upon whether the landowner knows about the trespass. For an unknown trespass that the landowner doesn’t know about, a landowner owes only the duty to keep from intentionally harming the trespasser upon discovery. But there is a higher duty of care for known trespass, one that the landowner knows or should know is occurring, such as when snowmobilers routinely cross a field without permission. The landowner must eliminate any unexpected dangerous conditions that could harm a known trespasser or must warn the trespasser about the danger.

There is a special duty of care owed to trespassing children.
In Ohio, the “attractive nuisance” law applies to when there is a dangerous “artificial” condition that attracts a child but also creates an unreasonable risk of harm to the child. If it is foreseeable to a landowner that a child would be drawn to the attractive nuisance, the landowner must take steps to keep the child away from it or from being harmed by it. A landowner who fails to do so could be liable for the child’s harm and for harm to a trespassing adult who tries to rescue the child.

Examples of attractive nuisances on farms include:
- Manure lagoons
- Machinery
- Grain bins
- Grain elevators

Animals and other natural conditions like ponds are not attractive nuisances under Ohio Law.

In what ways can you protect yourself and your property from trespassers and liability?
If you want to stop trespassers from coming onto or harming your property, be careful about the actions you take. You could be liable for intentionally harming a trespasser by setting a dangerous hidden “trap” or chasing and attacking the trespasser upon discovery. You could also be liable for holding a trespasser against his or her will, because Ohio’s “citizen arrest” law allows you to detain a trespasser only if the person committed a felony, such as a murder. Ohio law doesn’t allow you to harm or apprehend a trespasser simply because the person is on your property or might harm your property.

The law, however, does allow you to use force against a trespasser to defend yourself or another person from imminent serious harm. If a trespasser has the ability, intent, and opportunity to cause you or another person bodily injury or death, Ohio law allows you to defend yourself without liability for harm to the attacker. Furthermore, if the person unlawfully enters your residence or vehicle, Ohio’s “castle doctrine” presumes that the person is a serious imminent danger against which you may defend yourself without liability for the intruder. These laws won’t prevent a lawsuit against you by the harmed person, but they will provide you with an affirmative defense that could remove liability.
“Do’s”—Actions you can take to reduce your risk of liability and comply with Ohio Law:

There are a number of actions farmers and landowners can take to reduce the risk of liability and comply with Ohio law:

- Do call your local law enforcement officials to report trespassers rather than taking the law into your own hands.
- Do assess your farm often to identify areas where trespasses occur regularly.
- Do eliminate dangers in areas where trespassers visit, put up warnings that give notice of the specific dangers, or install blockades or fences to keep trespassers away from dangers.
- Do consider whether children live near your farm and if so, assess the property for dangerous “artificial conditions” that could attract them.
- Do eliminate artificial dangers if you can, keep children away, or warn the children and their parents of the danger.
- Do give recreational users on your farm permission if you don’t mind having them there, so that you’ll have immunity from liability under Ohio’s Recreational User’s law.
- Do keep records of how you remove or repair dangerous conditions and provide warnings.

Special actions to reduce your risk of liability

Recreational User’s Immunity

Many people want to use farms for recreational activities like hunting, fishing, snowmobiling, and four-wheeling. Ohio’s Recreational User’s Statute protects a landowner from liability for these types of recreational uses as long as the landowner gives permission to the user and doesn’t receive a fee or benefit for the use other than a lease payment. Note that Ohio’s hunting laws state that a landowner has no liability to a hunter who does not have a landowner’s written permission to hunt on the property.

Signage

Under Ohio law, signs should be “posted in a manner reasonably calculated to come to the attention of potential intruders.” In other words, “no trespassing” or warning signs should be easy to see and read from a distance. Landowners should post signs in places where trespassers might enter the property. Signs should also be posted so that trespassers see a sign before coming upon a dangerous condition on the property.

“Don’ts”—Actions to refrain from when dealing with trespassers on the farm:

There are also a number of things landowners should not do when dealing with trespassers on the farm:

- Don’t ignore dangerous conditions if you know trespassers will encounter them. Don’t assume children and other trespassers understand the dangers on farms.
- Don’t charge a fee other than a lease fee if you give people permission to engage in recreational activities on your farm—you’ll lose your immunity under the Recreational User’s Statute.
- Don’t take the law into your own hands by setting traps, chasing down trespassers, or detaining them—you could be liable for harm caused.
- Don’t use excessive or deadly force against a trespasser.

Where to find the laws

- Criminal Trespass
  - Ohio Revised Code 2911.21
- Attractive Nuisance Law
  - Ohio Revised Code 2305.402
- Recreational User’s Statute
  - Ohio Revised Code 1533.18 and 1533.181
- Citizen’s Arrest
  - Ohio Revised Code 2935.04
- Self Defense
  - Ohio Revised Code 2901.05(B)
- “Castle” Doctrine
  - Ohio Revised Code 2901.09

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