

# Law Bulletin

Law you need to know from OSU Extension's Farm Office

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## The Do's and Don'ts of Dealing with Trespassers on the Farm

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Trespassing is a common problem for farmland owners and one that raises concerns about liability. Will a landowner be liable if a trespasser suffers an injury on the farm? 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.

### Who 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 duty of care do you have for 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.

### What about 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 and anything else with moving parts
- Grain bins
- Grain elevators
- Ladders
- Hay lofts

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

### How can you legally keep trespassers off your property?

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.

### **What about hunters and other recreational users?**

Many people want to use farms for recreational activities like hunting, fishing, snowmobiling, and four-wheeling. But will you be liable if a trespassing recreational user is harmed on your property? Possibly, if you knew that the trespass kept occurring and you knew that there was a perilous condition in the area where the trespass occurred. Ohio's hunting laws, however, clearly state that a landowner has no liability to a hunter who does not have the landowner's written permission to hunt on the property. For other types of recreational users, a landowner is better protected from liability by allowing the users onto the property. That's because Ohio's Recreational User's Statute protects a landowner from liability for recreational users 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. Converting a recreational trespasser to a recreational user with permission can provide liability protection.

### **Should you post "no trespassing" and "warning" signs?**

Yes. Signs can help deter trespassers by establishing clear boundary lines and can also warn trespassers about those dangerous conditions that you know could harm them. Under Ohio law, a landowner should post "no trespassing" signs "in a manner reasonably calculated to come to the attention of potential intruders." In other words, "no trespassing" or similar warning signs should be easy to see and read from a distance. Landowners should post signs in places where trespassers might enter the property and post warning signs where they provide sufficient notice about dangerous conditions on the property.

### **"Do's"—Actions you can take to reduce your risk of liability for trespassers:**

- Do call local law enforcement 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 from the dangers, and 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.

### **"Don'ts"—Actions you should not take when dealing with trespassers:**

- 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 to a person that you convert from a trespasser to a "recreational user" (other than a lease fee). The Recreational User's Statute immunity from liability only applies if you don't charge a fee.
- Don't take the law into your own hands by setting traps, chasing down trespassers, or detaining them—you could be liable for injuries that you cause.
- Don't use excessive or deadly force against a trespasser to protect your property. Such force may only be used if a person is in danger or a trespasser enters a "castle."

### **Where to find the laws**

The Ohio Revised Code is online at <http://codes.ohio.gov>.

- Criminal trespass
  - Ohio Revised Code §2911.21
- Attractive nuisance law
  - Ohio Revised Code §2305.402
- Citizen's arrest
  - Ohio Revised Code §2935.04
- Self defense
  - Ohio Revised Code §2901.05(B)
- "Castle" doctrine
  - Ohio Revised Code §2901.09
- Recreational User's Statute
  - Ohio Revised Code §1533.18 and §1533.181

### **FOR MORE INFORMATION FROM OSU EXTENSION'S AGRICULTURAL & RESOURCE LAW PROGRAM:**

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings by e-mail with timely articles on legal issues of importance to Ohio agriculture.
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