

Landowners Owe 'Duty of Care' to People on Property

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According to law, three classes of people can be on a landowner's property. They are a trespasser, a licensee, or an invitee. Landowners owe a "duty of care" or "duty toward the visitor" to any person in these three classes. **No trespasser, licensee, or invitee can be intentionally injured willfully, maliciously, or through gross negligence.**

A trespasser enters property without permission and does not have to be warned of a dangerous condition on the property unless:

- a condition exists that could cause serious injury or death,
- a dangerous condition is unlikely to be noticed,
- trespassers frequently intrude and a dangerous condition exists.

Landowners do owe trespassers the above responsibility.

Landowners owe a greater duty of care to a licensee than to a trespasser. A licensee enters the property with permission from the landowner but does so for his or her own benefit and not to benefit the landowner. The landowner must repair dangerous conditions and warn the licensee visitor of hazardous situations. An example of a licensee is someone a landowner allows to hunt on his or her property without paying a fee.

An invitee is owed the highest duty of care. An invitee enters property at the landowner's invitation and for the landowner's benefit. The invitee might be paying to hunt or fish, to cut a Christmas tree, or to buy firewood. The visitor must be warned of any dangerous condition, and the property must be kept in a reasonably safe condition.

Children who trespass are protected under a "dangerous instrumentality" rule similar to the "attractive nuisance" rule. If a "dangerous instrumentality" or condition exists on a particular area of property known by the owner to be frequented by children, the danger should be corrected or eliminated. Live electrical wires, old machinery, rotting buildings, and water ponds can present dangerous conditions for children.

A 1965 West Virginia law reduced liability for landowners who allow recreational users to use their property freely. The law states that landowners owe no duty of care to maintain safe conditions or to warn visitors of dangerous conditions if they don't charge a fee or benefit otherwise. Recreational visitors are, therefore, treated as trespassers. The law has since been amended to permit the landowner to charge a \$50 fee.

Landowners can legally post their land and deny access to all people — or only to trespassers. Developed lands for agriculture and all fenced land are automatically posted.

Other land can be posted by using signs containing the words "NO TRESPASSING" in 2-inch-high letters. Signs are located along property boundaries at no more than 500-foot intervals and at all corners. These signs must also include the name and address of the landowner or lessee.

Additional information is available in RD Publication No. 725 *Real Property: Rural Landowner's Liability and Posting of Land*. Contact the Appalachian Hardwood Center for a copy. The address is Appalachian Hardwood Center, WVU, PO Box 6125, Morgantown WV 26506-6125. It is also on the WEB at <http://www.wvu.edu/~exten/infores/pubs/other/rd725.pdf>.