



Trespassing

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Background

Trespassing is a legal term that can refer to a wide variety of offenses against a person or against property. Trespassing as it relates to real estate law means entering onto land without consent of the landowner. There are both criminal and civil [TRESPASS](#) laws. Criminal trespass law is enforced by police, sheriffs, or park rangers. Civil trespass requires that the landowner initiate a private enforcement action in court to collect any damages for which the trespasser may be responsible, regardless of whether a crime has been committed. Traditionally, for either type of trespass, some level of intent is required. Thus, the trespasser must not simply unwittingly traverse another's land but must knowingly go onto the property without permission. Knowledge may be inferred when the owner tells the trespasser not to go on the land, when the land is fenced, or when a "no trespassing" sign is posted. A trespasser would probably not be prosecuted if the land was open, the trespasser's conduct did not substantially interfere with the owner's use of the property, and the trespasser left immediately on request.

Landowner Consent

Express Consent

The landowner may indicate, verbally or in writing, permission to enter onto the land.

Implied Consent

The existence of consent may be implied from the landowner's conduct, from custom, or from the circumstances. Consent may be implied if these factors exist: the landowner was unavailable to give consent and immediate action is necessary to save a life or prevent a serious injury. Additionally, some states may extend this protection to animals.

Hunting

A hunting license is not a license to trespass, but state laws treat hunters differently when it comes to

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trespassing. Some states have laws that specifically address trespassing while hunting, and others rely simply on the general trespassing statutes of the state. In about half of the states posting is not required to prevent trespassing; that is, it is against the law for hunters to trespass on private property without the landowner's permission even if the land is not posted. Where posting is required, some states have laws specifying how to post land. In some states, trespass while in possession of a firearm is a [FELONY](#) punishable by [IMPRISONMENT](#) for up to five years and/or a fine up to \$5,000. A few states have laws that address hunters trespassing to retrieve dogs or wounded animals. In most states, however, hunters may not retrieve dogs or wounded animals if they cannot legally hunt on that land.

Adverse Possession

Sometimes a trespasser continues trespassing for such a long time, the law permits the trespasser to have the right to stay on the land. This right ranges from the right to live on the land to the right to pass across it to get somewhere else. If the piece of property in dispute has been used by someone other than the owner for a number of years, the doctrine of adverse possession may apply. State laws vary with respect to time requirements; however, typically, the possession by the non-owner needs to be open, notorious, and under a claim of right. In some states, the non-owner must also pay the property taxes on the occupied land. A permissive use of property eliminates the ability to claim adverse possession. One common form of trespassing is when a neighbor's driveway or fence encroaches onto someone else's land. Sometimes the owner will not want to make an issue of the encroachment—either because it seems to be a minor problem or because the neighbor is a friend. To avoid problems later, however, the owner should give the "trespasser" written permission to keep the [ENCROACHMENT](#) for as long as the owner continues to authorize it. If properly handled, this document will prevent the trespasser from acquiring a right to continue the encroachment and from passing along this right to future owners.

Trespass By Animals

In the old courts of England, the owner of livestock was held strictly liable for any damages to person or property done by the livestock straying onto the property of another. The mere fact that animals strayed and damaged crops, other livestock, or [PERSONAL PROPERTY](#) was sufficient to hold the owner liable for the injuries inflicted by cattle, sheep, goats, and horses. This strict liability position made sense in the confines of a small island such as England, but in the United States with herds of livestock wandering over vast expanses of land, a different process developed. The legislatures enacted statutes which provided that livestock were free to wander and that the owner was not responsible for damage inflicted by those livestock unless they entered land enclosed by a legal fence. These became known as open range laws. Subsequently, certain states reversed the open range laws and required the owners of livestock to fence in their livestock. This position was similar to the [COMMON LAW](#) position, only instead of strict liability, the livestock owner could be held liable only upon a showing that the livestock escaped due to the owner's [NEGLIGENCE](#).

State Laws

All city, county, and state law enforcement officers are authorized to enforce the hunter trespass laws. In 40 states, wildlife officers from the state's wildlife management agency are also authorized to enforce the trespassing laws. In 22 states posting is not required which means it is against the law for hunters to trespass on private property without the landowner's permission even if the land is not posted. Where posting is required some states have laws specifying how to post land. Only a few states have statutes that specifically address hunters trespassing to retrieve dogs or wounded animals. In all other states hunters may not retrieve

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dogs or wounded animals if the hunter cannot legally hunt on that land.

ALABAMA: All hunting requires permission of the landowner. There are no requirements for posting by property owners

ALASKA: Trespassing notices must be printed legibly in English, be at least 144 square inches in size, give the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property, be placed at each roadway and at each way of access onto the property that is known to the land owner. In the case of an island, signage must be placed along the perimeter at each cardinal point of the island. The sign must explicitly state any specific prohibition that the posting is directed against.

ARIZONA: Hunters are permitted to enter onto land unless lawfully posted. Signs must be at least eight inches by eleven inches with plainly legible wording in capital and bold-faced lettering at least one inch high. The sign must have the words "no hunting", "no trapping" or "no fishing" either as a single phrase or in any combination. The signs must be conspicuously placed on a structure or post at least four feet above ground level at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary. A sign with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire above ground surface of the post facing outward and on both lateral sides from the closed area.

FLORIDA: Trespass while in possession of a firearm is a felony punishable by imprisonment for up to five years and/or a fine up to \$5,000. A person who knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization also commits felony trespass. A potentially lethal projectile includes any projectile launched from any firearm, bow, crossbow or similar tensile device.

IOWA: The unarmed pursuit of game or fur-bearing animals lawfully injured or killed which come to rest on or escape to the property of another is an exception to the trespass law.

KANSAS: Trespassing is permitted by licensed hunters in order to pursue a wounded game bird or animal, except that if the owner of the land instructs the hunter to leave, the hunter must leave immediately. Any person who fails to leave such land when instructed is subject to the provisions of the criminal trespass law.

LOUISIANA: Trespass is permitted in order to retrieve a dog or livestock, provided the trespasser is unarmed. Posting by landowners is required. Trespass on marshlands to trap or hunt fur bearing animals without permission is strictly prohibited

MARYLAND: It is unlawful to hunt on private lands in all counties without permission of the landowner or the landowner's [LESSEE](#). Written permission is required from the property owner to hunt on private property in Allegany, Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Garrett, Harford, Howard, Montgomery, Prince George's, St. Mary's, and Washington Counties. Written permission is required from the property owner to hunt deer on private property in Somerset, Wicomico, and Worcester Counties. Written permission is required from the property owner to trap on private and [PUBLIC LANDS](#) in all counties. The landowner is not liable for accidental injury or damage to the hunter, whether or not the landowner or the landowner's agent or lessee have given permission to hunt.

MICHIGAN: A person other than a person possessing a firearm may, unless previously prohibited in writing or orally by the property owner, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog. The person shall not remain on the property beyond the reasonable time necessary to retrieve the dog.

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MINNESOTA: Law allows hunters to trespass unless no trespassing signs are posted along the [BOUNDARIES](#) every 1000 feet or less, or in wooded areas where boundaries are less clear, at intervals of 500 feet or less, or at the primary corners of each parcel of land and at access roads or trails at points of entrance. Furthermore, the law mandates that the lettering should be at least two inches high and the name and phone number of the landowner or occupant should be listed. Lands that are cropped or grazed and show signs of tillage, crops, crop residue, or fencing for livestock containment do not require posting of signs. Hunters must ask permission to enter these lands. A person on foot may, without permission of the owner, enter land to retrieve a wounded animal that was lawfully shot. The hunter must leave the land immediately after retrieving the wounded game. A person on foot may, without permission of the owner, enter private land without a firearm to retrieve a hunting dog. After retrieving the dog, the person must immediately leave the premises.

NEW YORK: A person may enter and remain upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, unless notice against trespass is personally communicated to by the owner.

NORTH CAROLINA: In Halifax and Warren counties, no arrests for trespassing can be made without the consent of the owner the land.

NORTH DAKOTA: Any hunter may enter upon legally posted land to recover game shot or killed on land where the hunter had a lawful right to hunt.

OKLAHOMA: Signs are required at all entrances and all corners and at 200 yard intervals along property lines.

OREGON: No person shall hunt upon the cultivated or enclosed land of another without first obtaining permission from the owner or lawful occupant thereof, or the agent of such owner or occupant. The boundaries of enclosed land may be indicated by wire, ditch, hedge, fence, water or by any visible or distinctive lines that indicate a separation from the surrounding or contiguous territory.

SOUTH CAROLINA: Any person entering upon the lands of another for the purpose of hunting, fishing, trapping, netting; for gathering fruit, wild flowers, cultivated flowers, shrubbery, straw, turf, vegetables or herbs; or for cutting timber on such land, without the consent of the owner or manager, is guilty of a [MISDEMEANOR](#).

SOUTH DAKOTA: In the part of the Black Hills fire protection district lying south of Interstate Highway 90, no person may enter upon any private land with intent to take or kill any bird or animal, after being notified by the owner or lessee not to do so. Such notice may be given orally or by posting written or printed notices to that effect at the residence or where the buildings are located thereon, and at the gates or entering places therein, and in conspicuous places around the land posted. All such notices shall contain the name and address of the owner or lessee posting the lands.

TEXAS: It is against the law to hunt or fish on privately owned lands or waters without the permission of the owner or owner's agent. No person may pursue a wounded wildlife resource across a property line without the consent of landowner of the property where the wildlife resource has fled. Under the trespass provisions of the Penal Code, a person on a property without the permission of the landowner is subject to arrest.

UTAH: Written permission is required from the owner or person in charge to enter upon private land that is either cultivated or properly posted and must include the signature of the owner or person in charge, the name of the person being given permission, the appropriate dates, and a general description of the property.

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VERMONT: Notices prohibiting the taking of wild animals shall be erected upon or near the boundaries of lands to be affected with notices at each corner and not over 400 feet apart along the boundaries thereof. Notices prohibiting the taking of fish shall show the date that the waters were last stocked and shall be maintained upon or near the shores of the waters not over 400 feet apart. Legible signs must be maintained at all times and shall be dated each year.

VIRGINIA: Fox hunters and coon hunters, when the chase begins on other lands, may follow their dogs on prohibited lands, and hunters of all other game, when the chase begins on others lands, may go upon prohibited lands to retrieve their dogs, but may not carry firearms or bows and arrows on their persons or hunt any game while thereon. The use of vehicles to retrieve dogs on prohibited lands shall be allowed only with the permission of the landowner.

WEST VIRGINIA: Written permission must be in the possession of anyone who will shoot, hunt, fish, or trap upon the fenced, enclosed or posted grounds or lands of another person. Written permission is also required to peel trees or timber, build fires or do any other act or thing thereon in connection with or auxiliary to shooting, hunting, fishing or trapping. Hunters who kill or injure any domestic animal or fowl, destroy or damage any bars, gates, or fence, or leave open any bars or gates resulting in damage to the owner, can be held criminally liable as well as liable to the landowner. The landowner may personally arrest any such person found violating this law and take the hunter before a [JUSTICE OF THE PEACE](#) for trial. In such instances, the landowner is vested with all the powers and rights of a game warden.

Additional Resources

The Legal Edge for Homeowners, Buyers, and Renters. Bryant, Michel J., Renaissance Books, 1999.

Modern Law of Deeds to Real Property. Natelson, Robert, Aspen Law, 1992.

Neighbor Law: Fences, Trees, Boundaries and Noise. Jordan, Cora, Nolo Law, 2001.

Organizations

Environmental Health Center

1025 Conn. Ave., NW, Suite 1200

Washington, DC 20036 USA

Phone: (202) 293-2270

URL: <http://www.nsc.org/ehc.htm>

The Fund for Animals

200 West 57th Street

New York, NY 10019

Phone: (212) 246-2096

Fax: (212) 246-2633

URL: <http://www.fund.org>

Primary Contact: Marian Probst, President

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