



# Woodland Owner Notes

## Land Ownership, Liability, and the Law in North Carolina

*A change in North Carolina law makes it possible for landowners to open their lands with less concern about liability in case of an accident or mishap. It is now possible for landowners to allow the public on their property for educational and recreational reasons, when no fee is charged. Under these circumstances, a landowner is required to provide the duty of care owed to a trespasser. This should reduce concerns of landowners wanting to permit visits by school groups, 4-H clubs, scout troops, and others who would be present for educational purposes and hunters, hikers, and others who would be present for recreational purposes.*

*Now more than ever, demands are being placed on private lands to provide recreation, hunting, and educational use for North Carolina's growing population. Many landowners choose to open their lands to invited guests and accept the responsibility to provide a certain level of protection for their guests. Beyond invited guests, however, landowners also accept a certain degree of obligation or liability for lessees and even trespassers. The following note explains the major laws impacting landowners' liability in North Carolina and the responsibilities landowners have for invited and uninvited users of their property.*

### Common Law in North Carolina

North Carolina law once recognized three classes of land users: trespassers, licensees, and invitees. It now recognizes only two: trespassers and invitees.

The law provides the least amount of protection to a trespasser, that is, someone who enters the premises of another without permission or any other right to be there. To avoid liability, the law requires only that the landowner avoid willful or wanton injury to the trespasser. The landowner usually knows if someone has been granted permission to be on his property, but he or she must be

careful to avoid what might be interpreted as implied permission. For example, if land is not properly posted, or if access is often tolerated without the express permission of the owner, then permission may be implied and the landowner's liability changes. A recent change in N.C. law has extended the lowest form of liability to landowners who open their land to recreational and educational users without a fee (details are in the Recreation/Education section below).

In cases involving children, the courts may apply the principle of "attractive nuisance." In such instances it is the landowner's responsibility to prevent children from accessing a

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site or condition on property that the owner recognizes as likely to be visited by children. A common example of an attractive nuisance is a pond. Note that the land need not be “attractive” to children; it is sufficient that children are likely to trespass upon it. Trespassing children are owed the same duty as invitees.

Previously at common law, a “licensee” was provided greater legal protection than a trespasser, but less than an invitee. In *Nelson v. Freeland* (349 N.C. 615 [1998]), the N.C. Supreme Court abolished the licensee category by requiring that all licensees be treated as invitees, and that remains the law.

The law provides the greatest protection to invitees, and this class of user creates the greatest liability for the landowner. Invitees access the landowner’s property with the knowledge and permission of the owner, and the arrangement is to their mutual benefit. Benefits may be exchanged directly, such as when the invitee pays the landowner for hunting privileges.

When permitting access to property, inform each invitee of potentially dangerous areas, such as large holes, ponds and streams, and dead or dying trees. If loggers or hunters are in the area, explain their locations.

### Minimizing Liability

There are several positive steps that landowners can take to minimize liability from users:

**Liability Insurance.** Most landowners choose to minimize liability by the purchase of insurance policies to protect their assets. Most commonly, policies cover the hunting lease liability, offering specific protection against injury and guest liability, and often contractual coverage. Landowners should read their policies to ensure that they have this and any other needed coverage. In addition to paying legitimate claims and judgments, most insurance policies also provide for defense costs, including attorney fees, at no additional cost to the policyholder. This aspect of insurance protects policyholders from the costs associated with defending lawsuits that ultimately prove to be without merit. It is very important that coverage limits be sufficiently high to prevent the insurance company from avoiding this obligation by paying the plaintiff the policy limits rather than defending against the lawsuit.

Liability insurance can be relatively inexpensive on undeveloped land or where limited coverage is involved. For instance, many policies average \$0.28 per acre for general liability coverage. A common liability coverage offers a \$1,000,000 limit for coverage and a \$250,000 deductible

per claim. Typically, premiums are priced according to the acreage or the size of hunt club membership. Most of the lowest-cost plans require membership or affiliation with the sponsoring organization. Sponsoring agencies may be landowner or hunting organizations.

**Proper Posting.** North Carolina’s landowners can protect themselves by following the regulations concerning other people’s use of their property. Protection from trespassers is best accomplished through proper posting by these rules:

1. Proper Posting: Signs must be at least 120 square inches (10” x 12”) and posted no more than 200 yards apart.
2. Post at least one sign on each side and at each corner of the property if the corner can be easily located. (To prohibit fishing, post signs not more than 200-300 yards apart along the banks and shoreline.)
3. Post signs out of reach to reduce the risk of vandalism; replace as they become worn, damaged, or stolen.
4. Erect visible gates across any private entrance to prevent unauthorized entry. Cable gates are inadvisable because, even if visible when erected, they tend to become difficult to see. This may result in liability to those injured by the cable.

For more information, see Woodland Owner Note # 35, *Maintaining Forest Property Boundaries*.

**Warning Users.** Whether or not you demand a fee from users of your land, it is essential that you warn them of any possible dangers that exist on the property. These dangers may include, but are not limited to, uncovered wells, unstable rock cliffs, free ranging cattle, guard dogs, hunters and their locations, ongoing timber harvesting, or traplines. While this may seem overly cautious, remember that failure to provide proper warning can place you in a reckless or negligent light in a court of law should any harm come to the users of your property.

Landowners should also give thought to how they would handle an emergency. At a minimum, landowners should keep emergency telephone numbers, including those of law enforcement officials, emergency medical services, and their insurance representative, permanently posted near their telephones.

**Fencing or Removing an Attractive Nuisance.** An attractive nuisance is considered a continuing danger or permanent condition that might inflict injury because of the likelihood that it may be visited by youth. Landowners therefore must keep their premises free from hazardous

conditions that might be harmful to child trespassers. Specific concern areas include water areas (fishing ponds), docks, buildings, equipment, and just about any other structure that could potentially harm a child.

While it may be impossible to remove all attractive nuisances, fencing can act as a good deterrent and provide some protection from liability through negligence claims. Fencing is particularly important for liability protection where dangerous conditions are manmade and for which the landowner has any knowledge that children might enter and harm themselves. It is essential that fences be well-maintained.

**Legal, Written Contracts.** Well-written agreements between the landowner and user can provide protection and place responsibility with the appropriate party. A written agreement should always be made with competent legal assistance.

Written agreements such as leases are generally considered to be instruments that reduce, limit, or delineate the landowner's liability. Exceptions that may increase one's liability include:

1. When there are hidden dangers known to the landowner but undisclosed to users.
2. When the landowner keeps control of the property for his/her own use (the more property retained the more liability there will be).
3. When the landowner agrees to maintain facilities or makes repairs (tree stands for hunting, trails for all-terrain vehicles, buildings, fences, etc.).

## Special Liability Concerns for Different Property Uses

### *Recreation/Education*

In 1995, the rules regarding educational and recreational use of private lands were modified to limit the liability owed to these users to the same duty of care that is owed to a trespasser. It is now possible for landowners to allow the public on their property for educational and recreational reasons when no fee is charged.

There are several important exceptions to the liability limitations of the new law:

1. Landowners must still warn and protect against attractive nuisances on the property.

2. The owner must inform invitees of artificial or unusual hazards of which he/she has knowledge.
3. The liability limitation doesn't apply to instances where an invitee uses the land for a purpose for which the land is regularly used, for which a fee is normally charged (even if not charged in that instance). (Example: An invitation to a free fishing day at a commercial fishing operation.)
4. Liability limitations are also voided when the extension of an invitation or the granting of permission is used to promote a commercial enterprise.

In the event of a serious injury or death, the likelihood of a lawsuit is very high. The law limiting liability for recreational and educational use does not prevent an injured party from bringing suit, even though it makes it less likely that such a party will win. In the event of serious injury or death, the landowner should limit access to the accident site to those with a need to be there: search and rescue personnel, law enforcement officials, and representatives of the landowner's insurance company. Under no circumstances should strangers (including those posing as reporters) be allowed to visit or photograph the site—they are most likely private detectives employed by a plaintiff's attorney. Should you receive a subpoena that requires you to permit access to the site, you should call your attorney and/or your insurance company immediately.

### *Hunting*

Hunting for food and for sport is enjoyed by thousands of North Carolinians each year, yet their joy is not always shared by landowners who open their property to hunters. Hunting liability issues are of great concern to landowners because of the inherent danger involved in the use of firearms and other weapons. However, when hunting is conducted safely and with guidance, a landowner can minimize liability and maximize benefit.

When landowners receive direct compensation from hunters in the form of cash, payment in kind, population control of crop-damaging wildlife, or habitat improvement, the hunters are considered invitees and as such they are provided the greatest protection under the law. The landowner must inform each person of potentially dangerous areas and make every reasonable effort to remove known hazards.

When granting access to more than one hunter, the landowner should have a system for separating individuals and acknowledging their presence on the property (magnetic boards or mandatory daily sign-in sheets at major entry

points). Detailed maps of the property should be provided. Landowners should take time to warn each hunter of dangerous conditions and locations, logging operations, and other hazards.

Contracts or other written agreements are useful in providing this information. Written documents can place appropriate responsibility with the hunter and document the hazards in writing. The lease or hunting agreement should require that the hunter(s) be competent and knowledgeable, use firearms safely, and follow all hunting rules and regulations.

For a detailed treatment of written contracts, hunting leases, and landowner liability, see Woodland Owner Note # 25, *A Landowner's Guide to Working with Recreationists*.

### *Firewood Removal*

Firewood removal for home heating represents an opportunity for landowners to reduce harvest debris or dead trees and even improve timber growth. Often firewood cutters are willing to harvest low-grade trees and slash for free or for a small fee. Firewood cutters thus represent a potential workforce to improve or upgrade a landowner's forest, but there are some liability concerns to consider.

Since landowners derive benefit from firewood removal, treat firewood cutters as **invitees**. As invitees, firewood cutters create the greatest liability for the landowner. Warn and protect firewood cutters from hazardous conditions, uses, structures, and activities. Be sure to separate individuals and parties so that they don't endanger others from the felling operations.

Firewood cutting is a dangerous activity. Walking and operating a chainsaw can be difficult in cutover areas because of standing, felled, and pinned-down materials. Require all firewood cutters to use appropriate safety equipment and to adhere to safe operating procedures. The chainsaw is a powerful, potentially deadly tool requiring skilled operation and caution when felling defective, hollow, leaning trees. The risks of injury are even greater when compounded by strong winds, thick brush, or attempts to fell a single tree among standing timber.

Mark individual trees to be cut or all the boundaries around an area where cutting is allowed. This should minimize the possibility/opportunity of woodcutters' inadvertently cutting the wrong trees.

As with the sale or removal of any product, a written, signed contract is recommended. The contract should clearly detail the rights and responsibilities of all parties.

For more information see *Timber Sales: A Planning Guide for Landowners*, AG-640.

### **Summary**

For North Carolina landowners, the best protection against liability is appropriate posting of lands, exercise of reasonable precautions in allowing land use, fencing or removing attractive nuisances, warning users about dangers, carrying appropriate and adequate liability insurance, and **seeking competent legal advice** before entering into any written agreements.

## **N.C. Statutes Related to Property, Posting, Trespass, and Liability**

The following section contains many of the important N.C. laws that impact property ownership. Your understanding of these laws can help protect your property rights and limit your liability for invited and uninvited guests.

### ***Trespassing on “Posted” Property to Hunt, Fish, or Trap***

*Article 22A.*

*14-159.6. Trespass for purposes of hunting, etc., without written consent is a misdemeanor.*

Any person who willfully goes onto the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs, or posters, described in G.S. 14-159.7, prohibiting hunting, fishing, or trapping, or upon which “posted” notices have been placed, to hunt, fish, or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred and fifty dollars (\$250.00), or by imprisonment for not more than six months, or by both fine and imprisonment.

### ***Proper Posting of Forest Property***

*14-159.7. Regulations as to posting of property.*

The notices, signs, or posters described in G.S. 14-159.6 shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner hereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart.

### ***Trespass***

*14-159.12. First degree trespass.*

- a) Offense—A person commits the offense of first degree trespass if, without authorization, he enters or remains:
  - 1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
  - 2) In a building of another.
- b) (Effective January 1, 1995) Classification—First degree trespass is a Class 2 misdemeanor.

*14-159.13. Second degree trespass.*

- a) Offense—A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:
  - 1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or
  - 2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.
- b) (Effective January 1, 1995) Classification—Second degree trespass is a Class 3 misdemeanor.

### ***Timber Trespass***

*14-135. Cutting, injuring, or removing another’s timber.*

If any person not being the bona fide owner thereof, shall knowingly and willfully cut down, injure, or remove any standing, growing, or fallen tree or log, the property of another, he shall be guilty of a Class 1 misdemeanor.

**Trail Use Liability**

*113A-95. Trail use liability.*

- a) Any person, as an owner, lessee, occupant, or otherwise in control of land, who allows without compensation another person to use the land for designated trail or other public trail purposes or to construct, maintain, or cause to be constructed or maintained a designated trail or other public trail owes the person the same duty of care he owes a trespasser.
- b) Any person who without compensation has constructed, maintained, or caused to be constructed or maintained a designated trail or other public trail pursuant to a written agreement with any person who is an owner, lessee, occupant, or otherwise in control of land on which a trail is located shall owe a person using the trail the same duty of care owed a trespasser.
- c) Effective July 21, 1993.

**Chapter 38A. Landowner Liability**

*38A-4. Limitation of liability.*

Except as specifically recognized by or provided for in this act, an owner of land who either directly or indirectly invited or permits without charge any person to use such land for educational or recreational purposes owes the person the same duty of care that he owes a trespasser, except nothing in this act shall be construed to limit or nullify the doctrine of attractive nuisance, and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge. This section does not apply to an owner who invited or permits any person to use land for a purpose for which the land is regularly used and for which a price or fee is usually charged even if it is not charged in that instance, or to an owner whose purpose in extending an invitation or granting permission is to promote a commercial enterprise.

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