

## #10 FOR IMMEDIATE RELEASE: November 15, 2007

Trespass may be easier to forgive than forget

By Curtis Seltzer

BLUE GRASS, Va.—One right that every owner holds in real estate is the expectation of privacy. You can generally keep others from entering and using your property--but not always. In rural areas, trespass is usually someone either taking a shortcut over someone else or using another's property for recreation, like hunting or ATVing. Country-property owners normally find one of three types of trespassers: those who feel they have a right to be on your land even though they know they don't; those who know better but trespass anyway; and those who actually do have a legal right to be there.

Each state defines trespass. (State codes are at <http://law.justia.com/>; case law interprets these statutes.) It's generally understood to mean entering on or using land without the owner's consent. But some states allow hunters to retrieve hunting dogs or pursue wounded game even if the landowner objects. And some states allow others to be on your land if you don't do exactly what you're supposed to do to keep them off. Hunting seasons—like November for deer--bring a lot of people into America's woods and fields. Hunters are generally much better about seeking landowner permission than the casual city visitor out for a country weekend. Hunters make a point of finding out who owns what, which lands are open and which owners will agree to hunting. Trespass can be either a civil or criminal offense, usually a misdemeanor. When a landowner asks a law-enforcement officer to make an arrest, criminal law is being invoked. Civil trespass involves a landowner suing for damages arising from a trespasser's acts.

Here's what a landowner should do to control trespass:

**Research your state law.** Find out what a landowner's rights are and what notice is required to place land off-limits.

**Provide notice.** Landowners need to meet a state's notice rules for informing the public that uninvited visitors are unwelcome. This usually involves an oral or written request, public announcement and/or posting signs on the land. Written notice should state that the landowner wants no trespassing and describe the property covered.

**Put the word out locally.** Ask your neighbors to help you get the word around, particularly if the property had been open. Take an ad out in the local newspaper just before hunting season.

**Post your boundary lines.** Tack up "No-Trespassing" signs. Twenty-two

states allow trespassing if land isn't posted. Some demand that a landowner comply with fiendishly detailed posting rules, which may specify the size of the sign and its letters, spacing along boundary lines, sign height and colors.

**Say exactly what you mean.** “No Trespassing” bars everyone; “No Hunting” only prohibits hunters; “Private Property” says nothing about keeping anyone off. Alaska insists that a posted sign state explicitly the specific prohibitions the landowner wants to prevent. Up there, if you don't post against trespassers engaging in consensual relations on your glacier, it's a go. Consider something like: “No admittance is permitted to the property of \_\_\_\_\_ [include address and phone] by anyone without written authorization, except for fire suppression, law enforcement and emergency protection of life or property.”

**Trespassing and hunting.** Hunters do not have the right to hunt on your land if you do whatever might be required to prevent it. Arizona, for example, allows hunters to enter private land for hunting unless it's lawfully posted. Kansas allows trespassing by licensed hunters to pursue wounded game, except when the landowner instructs the hunter to leave. Michigan and Louisiana allow trespass to retrieve a hunting dog as long as the trespasser is unarmed. Virginia allows fox hunters and coon hunters to follow their dogs on prohibited land if the chase begins on other lands.

**Plan ahead.** What should you do when you catch trespassers in the act? First, ask them to leave and explain why. Call the sheriff if they refuse. Second, consider giving the trespasser a face-saving out. Suggest, perhaps, he didn't know that your land was posted even though he's standing an inch away from your blinking, neon “No-Trespassing” sign that's larger than Andre, the Giant. Third, keep trespass in perspective. Trespassing doesn't harm a landowner or his property most of the time.

**What not to do.** Landowners rarely have the right to use force (self-help) against trespassers. Don't manhandle a trespasser or ram his vehicle. Reasonable force might be justified if a trespasser physically threatens a landowner. Avoid fights with drunks and armed men in bad moods. If you're threatened, walk away—after establishing that you've asked them to leave and getting their names or license-plate numbers. “Citizen arrest” does not generally apply since it prevents the trespasser from undoing his trespass by leaving. West Virginia, however, allows a landowner to assume the powers and rights of a game warden and personally arrest a hunter-trespasser and take him before a justice of the peace for trial.

Don't call a trespasser a liar to his face, especially in front of his fellow trespassers. People caught at wrong-doing don't like their integrity challenged. Don't dig Burmese tiger traps to catch chronic trespassers unless you can prove beyond a reasonable doubt that Burmese tigers are now fairly

common on your farm near Altoona, Pennsylvania. Never sic your dog on trespassers, particularly one who likes his belly rubbed by strangers. Be consistent. Landowners should not allow themselves to be argued into granting access to their property. Exceptions establish precedents.

Attractive nuisance. If you have a pond that has been the neighborhood swimming hole since before Columbus, you may have to install extra keep-out measures—like a fence and a locked gate. If a trespasser drowns in your attractive nuisance, you can be held liable. Don't humor wise guys. Woody Guthrie's "This Land is Your Land" contains an oft-unsung verse in which he rambles up to a "No-Trespassing" sign. Woody believed that its other side, which is blank, is the one made for you and me. Anyone who quotes this line is a trespasser who knows better. Inform him that you've written "No Trespassing" on the blank side as well...with invisible ink, and kick him off.

Trespass is always annoying but only occasionally dangerous. Most of us do it sooner or later, which is why forgiveness should be both accepted and extended.

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