

Farm Management

Liability depends on visitors' status

HUNTING season is upon us, which means landowners will be approached by hunters asking permission to hunt on the property. Liability for hunters, visitors and trespassers is always a concern for landowners.

Ohio law deals with premises liability by first creating categories of the different types of visitors and then applying different standards of law depending on the



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category. Landowners understandably are worried about liability for visitors to their

property, but Ohio law actually provides significant protection for landowners.

Trespassers

There are two types of trespassers: known and unknown. Property owners owe no duty of care to unknown trespassers other than not to intentionally cause harm to them. Essentially, landowners have no liability for unknown trespassers. Once a

trespasser is discovered or known, the property owner is required to warn the trespasser of any known dangers. An example: Unknown to the farmer, a trespasser is walking through the farmer's field. The trespasser falls in a large hole created by a tile blowout that the farmer intended to fix tomorrow. The farmer likely has no liability for the trespasser's injuries.

Now the farmer sees a trespasser walking toward the blowout hole. The farmer has a duty to warn the trespasser that he is headed toward a dangerous area. Provided the farmer gives the warning, he is not liable for the trespasser being injured on the property.

Under no circumstances should traps be set for trespassers. The law will almost always place a person's physical well-being above protecting property.

A few years ago, Ohio adopted a different standard for trespassing children. In some cases, a landowner can be liable for children who trespass. However, the landowner must know the child is trespassing, there must be an artificial condition that can injure the child, and the artificial condition must be able to be remedied relatively easily. These are difficult conditions to be satisfied, but it is possible for a landowner to be liable for a child trespasser.

Licensees

Ohio law considers a licensee to be someone who comes onto the landowner's property for his own benefit, not the landowner's benefit. An example is someone who asks to cut firewood on the property and does not pay the landowner. A licensee is similar to a known trespasser in that the landowner is only required to inform the visitor of any known dangers and refrain from intentionally harming the visitor.

Invitees

Invitees are invited onto the property for the landowner's benefit. An example is a farm market inviting guests onto the property to buy produce. The landowner has a duty to inspect and repair any dangerous conditions or to warn and keep guests away from any danger that cannot be remedied. Obviously this is the highest degree of liability. Landowners who often have invitees should be sure their liability insurance policy covers these guests.

Hunters, recreational users

Hunters are in a special category called "recreational user." Ohio law creates immunity for the landowner from injuries sustained by a recreational user. The definition of recreational use is "to hunt, fish, trap, camp, hike or swim; or to operate a snowmobile, all-purpose vehicle or four-wheel-drive motor vehicle; or to engage in other recreational pursuits." Landowners can be compensated for the use of their land and still maintain the liability immunity. The Recreational User Statute provides significant liability protection to landowners who allow hunters, fishermen and others onto their property for recreational purposes.



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