

NO TRESPASSING

By Attorney Michael H. Wald

"Do Not Trespass -- Violators Will Be Prosecuted" signs are posted on many fences in the country, on houses, in parking lots, on buildings, on schools, etc. Do these signs mean anything or are they just idle threats? What happens if you decide to ignore these warnings? Can violators really be taken to court?

Trespassing may be a crime, but it is also a civil wrong. Trespass to land is the correct name of this wrong which involves an interference with someone else's property. The property owner is the one who has exclusive possession and legally recognized rights to the property.

To be guilty of civil trespass, a person does not have to do any actual harm to the other's property, just interfering with the property is sufficient. Interfering can be entering onto the land, or causing something to enter onto the land, remaining on the land, or letting something remain on the land.

The most common type of trespassing is just to enter the property, such as walking on the land or hunting on the land. But you can be a trespasser without setting foot on the property. If you throw rocks at a house or a bullet goes across the land, you are letting something enter onto the land. Another form of trespass is called continuing trespass. This is where the offending object remains on someone else's property. Some examples of this are leaving your parked car in a private lot, building a fence on part of your neighbor's property, or not removing a tree that has fallen on your neighbor's property. If you have permission to enter onto the land, you can become guilty of trespassing if you commit a wrongful act on the property after entering. Suppose you are watering your neighbor's lawn while he is on vacation and you trample his flower bed, this is also a form of

trespassing.

Once the landowner's rights have been violated, the trespasser can be sued. The trespasser is liable for any damages to the property. These include any actual damages that have occurred and any that are a result of the trespass. Suppose you remove a fence, you are responsible for the fence, but also for any consequences of its removal, such as the loss of livestock. If no actual damages have occurred, the owner can still take you to court just for the principle involved and be awarded nominal damages which establish that you were wrong.

Even though you are liable for damages, the property owner is not liable if you are injured on his property. Once you enter his property, you take on this risk, whether it be slipping on your neighbor's sidewalk or injury from the owner trying to get you to leave. The owner has the right to use "reasonable" force to remove you from his land. As long as this force does not include great bodily injury, death, or setting traps with intent to injure, the owner has the right to protect his property. In a recent Florida case, a man set a fatal trap for a burglar. In that case, the grand jury refused to find a criminal wrongdoing.

There are few circumstances where trespass to land would be justifiable and these could be used as a defense. If you would cross the property of another in order to protect a life or property in an emergency, this would be a defense against trespassing. For instance, you may be able to protect someone being mugged or help at a traffic accident, but the only way to assist would be to enter another's property. Another defense would exist if you could show that the person claiming to be the landowner is not the real owner. Don't take chances. Next time you see a sign warning against trespassing, think about it. The landowner may be serious, and you may end up in court.

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