

5 Inexpensive Ways for Rural North Carolina Landowners to Lower Their Accident Liability Risks

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North Carolina landowners may worry from time to time about accident liability exposure from ranch or farm employees, hunters, fishermen, lease users (leasees) or other invited guests, or even from uninvited trespassers unknowingly using your land.

North Carolina law recognizes two classes of land users: lawful visitors and trespassers.

A landowner owes the highest legal duty to a lawful visitor. Lawful visitors access the landowner's

property with the knowledge and permission of the landowner. A landowner must exercise "reasonable care" to protect any lawful visitor from injury.

An "unlawful visitor," or trespasser, enters the premises of another without permission, or any other right to be there. The landowner owes very little legal duty to a trespasser: the law only requires that the landowner avoid any willful (intentional) injury to the trespasser.

Trespassing children, if they are entering a landowner's property to access an "attractive nuisance" such as a pond or junk pile, are owed the higher "lawful visitor" legal duty from the landowner. If the child's actions are legally found to be negligent, however, landowner liability may be reduced in some cases. Under the NC "Attractive Nuisance Doctrine" children under the age of 7 cannot be found negligent under any circumstances. Older children are held to increasing negligence standards.

A landowner may owe the higher lawful visitor legal duty if he gives "Implied permission" to use his land. A landowner may thus legally convert trespassers to higher liability lawful visitors if, for example, he does not properly post his land, or if the landowner often tolerates visitor access without the express permission of the owner.

If you are a North Carolina rural property owner, here are 5 easy and affordable and ways to help you sleep better at night:

1. Post Your Land, and Install Proper Gates!

To properly post your land in North Carolina, follow these rules:

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- A “No Trespassing” or other similar warning or notice signs must measure not less than 200 square inches;
- Such notices, signs, or posters must be posted along land boundaries, no less than 200 yards apart, with at least one notice sign located on each side of the property boundaries;
- Each land corner must be posted;
- To prohibit fishing or any taking of fish, appropriate signs, notices, or posters may be posted along the stream, or along a pond or lake shoreline at intervals not more than 200 yards apart;
- Purple paint may be used instead of notice or warning signs, according to the following rules: see N.C. Gen. Stat. § 14-159.7.

Install easy-to-see gates, such as farm and ranch style multiple bar gates, across any private entrance to prevent unauthorized entry. Do not use cable gates, because the cables may be hard to see, particularly at night or in low light, and may inadvertently injure ATV or other vehicle occupants, horses and horse riders, or other visitors.

2. Eliminate Attractive Nuisances, or Fence Them Off

Clean up anything that looks hazardous, such as a sharp rusting pile of metal farm junk. If your land contains a stock pond on it, particularly if it is visible from a road or school, or children are known to frequent the area, you might need to appropriately fence off the parcel.

3. Use a Written Waiver of Liability and Assumption of the Risk Contract, or Lease Contract

A written contract, clearly explaining inherent risks on the property, and having guests assume the risks of any hazardous activities they may voluntarily participate in, can help reduce the chance of a successful legal award if an accident occurs. All leases should be governed by a written contract, which clearly points out hazards, and has the lessee assume the risk of any hazardous activities (like hunting) that he voluntarily participates in.

If you are handing out waivers and assumption of the risk contracts to a Boy or Girl Scout troop before they camp on your property, make sure that parents

or legal guardians sign for any visitor under age 18, as minors cannot legally form a contract in NC.

4. Put Your Land In an LLC

With the right legal assistance, it is normally affordable and fairly easy to place your rural property into an LLC (Limited Liability Company.) I like LLCs because they are relatively inexpensive to maintain and easy to administer, with no required annual meetings.

An LLC may provide a rural landowner with an accident “liability cap,” so that if a visitor has an accident on the landowner’s property producing legal liability, the landowner’s other personal assets are normally protected from lawsuit risk.

Placing rural property into other types of corporate structures such as a corporation or limited partnership may also protect the landowner’s other assets against accidents on the rural property.

5. Purchase Liability Insurance

Even if you have placed your rural property into an LLC, property liability insurance can protect the value of your rural parcel itself. And property liability insurance policy should be considered on any rural land where third parties will be legally accessing your property.

References:

N.C. Gen. Stat. § 14-159.7.

Robert E. Bardon, Land Ownership, Liability, and the Law in North Carolina, North Carolina Forestry Library (June 2005).