

Summary

Landowners in North Carolina get the most protection from liability by marking boundary lines, appropriately installing POSTED signs, providing written permission for land use and acquiring adequate liability insurance. Use written agreements for specific long term leases. Always consult an attorney for legal advice. Timberlands Unlimited can assist landowners in all of their land and timber management needs including boundary line maintenance, posting of property and hunting or agricultural leases. Know what you own and be proactive about owning it

Responsibility and Liability of Landowners in North Carolina



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

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

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.

Maintaining Boundary Lines

Where is your land? Can you find it? Can someone else find it? Owning land is an investment and the first step in protecting your investment is to know where your property lines are located. Marking and maintaining boundary lines is one of the simplest yet most often overlooked forms of protection from theft, trespass and encroachment.

Why Identify Forest Property Boundaries?

"Finding the corners" is typically the only way many landowners can identify their property boundaries. While simply locating and marking corners might suffice on residential properties, it is inadequate for forest property where corners can be thousands of feet apart. As a forest landowner, establishing and maintaining well-marked lines can save you money, liability and litigation. The following events require or are aided by well-marked and posted property lines.

Timber Sales

Selling timber entails a precise location of the boundaries of a sale to conduct a legal and legitimate business transaction.

Management Activities

Timber harvesting, site preparation and prescribed burning operations must be conducted within the confines of ones property. Clearly defined property lines will help avoid conflicts and potential encroachment on adjoining lands.

Trespass

Unwanted trespass and poaching can be minimized by marking and posting property lines. In the case of hunting, trespass prosecution can only take place on lands upon which "posted" notices have been placed.

Adverse Possession

Unmarked property boundaries can lead to a loss of land. Land boundaries that are uncontested for a period of as little as 7 years can lead to loss of land by the original owner.

Timber Theft

Unmarked property can be susceptible to timber theft (timber trespass). The best protection against timber theft is a well-marked maintained boundary line.

Liability

Property ownership comes with many responsibilities and obligations to invited and uninvited users. Well-marked or posted boundaries can help minimize landowner liability, especially in the cases of recreation and use where no fees are exchanged.

Easements and Rights-of-way

Often some of the rights of ownership of land are forfeited to another party. An easement or right-of-way, which allows the holder a privilege to make some special use of it, is most common. Clearly locating the easement and respecting these interior boundaries can minimize problems with the easement holder.



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Common Law in North Carolina

North Carolina law recognizes only two classes of land users: 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.

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 the 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, 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.

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.

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.

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 can be used for hunting, fishing, farming, grazing, hiking, etc. Written agreements such as leases are generally considered to be instruments that reduce, limit, or delineate the landowner's liability

Hunting

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 or other tenants 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.

Landowner Protection Act (enacted 2011)

The Landowner Protection Act provides two ways for landholders to post their lands to allow only hunters, trappers and anglers with written permission to legally enter their property:

- As permitted in the past, the landholder can place notices, signs or posters on the property boundaries at a distance of 200 yards apart or closer.
- A new way for landholders to post their property is with purple paint. The landholder can paint a vertical line of purple paint on trees or posts around property boundary, or areas intended to prohibit trespass. The paint line needs to be at least 8" long and the bottom of the line should be between 3' and 5' from the base of the tree or post. The paint marks need to be placed 100 yards apart or closer.

Sportsmen need written permission, dated within the past 12 months, signed by the landowner or lessee, to hunt, fish or trap on lands posted with signs or purple paint. You must carry written permission on your person. If a hunting club has leased the land, hunters must have a copy of the landowner permission given to that club.

The Landowner Protection Act does not change general trespass laws nor have any effect on lands which are not posted. It does not repeal any local acts currently in effect that require written permission to hunt, fish or trap. The law states that a landowner who allows someone, without charge, onto their land for recreational purposes owes them the same duty of care they would owe a trespasser.