

LIABILITY FOR INJURIES TO TRESPASSERS IN MISSOURI

Every state has established its own laws with regard to the duty owed a trespasser. So, what type of liability can you have for the injuries of a trespasser on your property, in Missouri?



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The general rule is that landowners do not have a presumed duty to keep their premises safe for the benefit of a trespasser. The only conduct for which a property owner would possibly have liability for, would be willful or wanton misconduct. Every state has established its own laws with regard to the duty owed a trespasser. So, what type of liability can you have for the injuries of a trespasser on your property, in Missouri?

Who is a Trespasser?



A trespasser is someone who is present on property owned by someone else, without permission to be there. In terms of liability, trespassers can be classified as either discovered or undiscovered. If someone is an undiscovered trespasser, then the landowner in questions has a duty only to refrain from willful or wanton

misconduct. On the other hand, if a landowner knows that trespassers have been on the property before, then trespassers can be classified as "discovered" trespassers, to whom the landowner now owes the duty of ordinary care to warn of danger.

The Duty of Ordinary Care



A landowner owes a duty of ordinary care only when he or she has knowledge that trespassers consistently intrude upon property where the owner either engages in a dangerous activity or has maintained an artificial condition that the owner has reason to know is dangerous.

It must also be shown that the danger would not be discovered or appreciated by a reasonable trespasser.

What is Willful and Wanton Misconduct?

Wanton acts are committed with reckless indifference to the potential for injury. Whereas, willful acts are committed with actual knowledge, or the equivalent, that there is a dangerous condition but the actor consciously fails to take action to prevent injury.

Limitations on a Landowner's Duty

A landowner does not generally have an obligation to keep the premises in a non-hazardous state, when it comes to trespassers. In other words, the only duty is to refrain from any willfully injuries actions. The reality is, a property owner should not be required to anticipate and protect against the presence of a trespasser, but is instead allowed to assume that they will not enter onto the property without permission.

When can a Trespasser Prove Liability?

In some states, a trespasser is required to prove more than ordinary neglect on the part of the property owner in order to be entitled to recovery for any injury suffered. There must be some conduct by the property owner which establishes a wanton and reckless disregard of the safety of others. Put another way, there must be at least the suggestion of willful and intentional misconduct.

Missouri Trespasser Laws

In Missouri, a trespasser is someone who enters a property without the permission of the owner or possessor. It does not matter if the trespasser is unaware that he or she is on private property. Nor is there any requirements that the trespasser be on private property for a malicious purpose. In Missouri, a trespasser is generally owed no duty, however, some Missouri courts have

allowed trespassers to sue property owners under limited circumstances, including:

- Dangerous artificial conditions maintained close to neighboring properties
- Hidden dangers that are intentionally placed to injure trespassers
- The use of willful, illegal force against a trespasser in certain situations
- Dangerous conditions maintained near a public right of way

Recognizing the Elements of a Premises Liability Claim

When a premises liability claim involves a trespasser, the claimant must establish four elements in order to establish liability:

- A dangerous condition existed on the property.
- The possessor of the property had actual knowledge of the condition.
- The possessor had actual knowledge of the presence of a trespasser or the applicability of some exception to the general rule that trespassers are not owed a duty of care.
- The trespasser was injured as a result.

Exceptions Regarding Child Trespassers

One of the most common exceptions to the trespasser rule is commonly known as the "attractive nuisance doctrine." This legal principle creates liability for property owners who knew or should have known that children were likely to trespass on property. Basically, a property owner can be liable for injuries caused to children by conditions on their property that would be attractive and

dangerous to a curious child. Some common examples are unguarded swimming pools, trampolines, and abandoned refrigerators.

If you have questions regarding trespassers, or any other premises liability concerns, call the Cottrell Law Office at (800) 364-8305.

About the Author



Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

Memberships and Associations:

National Organization of Social Security Representatives
Benton County Bar Association
Arkansas Bar Association
The Missouri Bar
Kansas Bar Association
Oklahoma Bar Association
Arkansas Trial Lawyers Association
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