

**TRESPASSERS TO GET LITTLE QUARTER UNDER NEW OHIO LAW:  
Ohio Legislature preemptively rejects American Law Institute publication  
that landowners should owe trespassers a duty of reasonable care**

Even if they knew nothing about the law, most Ohioans would reasonably assume that they would not be legally responsible for a trespasser who enters their land and is then injured. And, with some limited exceptions, they would be right. Under existing and well-established Ohio common law, the possessor of real property generally owes no duty to a trespasser on his or her property.

Not everyone agrees. While they hold no direct law-making authority in Ohio, the American Law Institute is a group of legal minds from around the United States that publish model principles of law. That is, they attempt to combine existing common law from the various States and, in some instances, change it to what they think the law should be. The ALL's list of publications include the Restatements on the Law, which are regarded as some of the most influential legal treatises cited by courts. In this case, the American Law Institute proposed a nationwide change in the traditional duty of care that landowners owed (or, more accurately, did not owe) to trespassers, creating a duty of reasonable care similar to the one owed to those you would invite on to your property. Upon hearing this, Ohio property and business owners went straight to Columbus.

And it worked. Hearing the pleas of its concerned citizenry, the Ohio Legislature passed Revised Code § 2305.402, codifying the existing Ohio common law on the issue before injured trespassers could ever argue, or Ohio courts otherwise adopt, the much higher Restatement standard. This new statute solidifies the public policy in Ohio that a possessor of real property generally does not owe any duty to a trespasser on the possessor's property *unless*:

- The possessor willfully, wantonly, or recklessly acts in a way that is likely to cause injury to the trespasser;
- The possessor knows or should know that the trespasser is in peril on the property and the possessor fails to exercise ordinary care to avoid the injury to the trespasser; and
- The trespasser is a minor who enters the possessor's property because of an "attractive nuisance" on that property and is injured, or if an adult trespasser is injured in an attempt to rescue that minor.

Ohio Revised Code § 2305.402 takes effect on September 6, 2012. Until that time, Ohio property and business owners will still be well protected by the common law upon which that statute is based and upon which Ohioans have relied for many years.



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