

TRESPASSER RESPONSIBILITY



A common-sense approach

Our liability laws favor trespassers over landowners

You have probably heard the story of the burglar who sued the woman whose house he was robbing after he was injured on broken glass. But did you know such cases actually happen in New York? Our state is one of only two states in the nation (the other is California) which allow trespassers to sue property owners for injuries sustained while illegally on another person's property.

New York should limit liability to trespassers

In 48 states, a property owner's legal responsibility, also known as "duty of care," to an entrant on the land is based upon the entrant's status: 1) invitee, 2) licensee, or 3) trespasser. A different duty of care corresponds to each category. For example, if a land owner expressly invites someone onto his or her property, he or she owes that person the highest degree of care, and must warn of any known hazards or even hazards he or she should have known about. But when a person enters another's land as a trespasser, there is generally no duty owed except for the land owner's duty to refrain from intentionally injuring the trespasser. The status-based approach provides both courts and involved parties with unambiguous, predictable, and easy-to-apply duty rules.

Liability limits would have major benefits

Fundamental fairness

Our current backwards standard of liability deprives property owners of the right to free enjoyment of their land and puts law abiding citizens at risk of being sued through no fault of their own.

Improved economic competitiveness

New York's oppressive lawsuit climate drives up insurance and legal costs, creating barriers to job creation and investment. Enacting rational limitations on landowner liability would encourage businesses to locate in New York, creating jobs and increasing tax revenue.