

➤ TRESPASS

Legal Issues in CITIZEN SCIENCE



What is Citizen Science?

"Citizen science* is a form of open collaboration where members of the public participate in the scientific process to address real-world problems in ways that include identifying research questions, collecting and analyzing data, interpreting results, making new discoveries, developing technologies and applications, and solving complex problems."

How Do I Use this Fact Sheet?

This fact sheet is part of a series that addresses relevant legal issues when conducting citizen science projects. The goal is to help minimize the impacts legal issues can have on citizen science projects, so these issues do not become roadblocks to the success of these projects.

These fact sheets are intended for volunteers and citizen science project leaders and researchers conducting coastal and marine science, particularly in North Carolina. However, practitioners in other disciplines and states can adapt these guidelines as appropriate for their own use.

*Source: The Federal Community of Practice on Crowdsourcing and Citizen Science at <http://www.digitalgov.gov/communities/federal-crowdsourcing-and-citizen-science/>.

TRESPASS

One of the essential rights of an owner of real property is the right to exclude others from the property. Trespass is relevant to citizen science because such projects can be conducted on public or private land. Volunteers must abide by the relevant trespass laws that govern each kind of property.

Participants should be mindful of where public land ends and where private land begins. This notion is particularly important when conducting citizen science projects on beachfront property, where the distinction between public and private land is unusually complex.

The laws governing trespass vary from state to state. This fact sheet can be used as a quick reference guide to the concept of trespass in North Carolina. Anyone involved in citizen science should become familiar with both state and local trespass laws and regulations.

For more information on trespass at the state and local levels, see the accompanying North Carolina Sea Grant publication *Legal Issues in Citizen Science: A Guide for Coastal and Marine Scientists and Their Volunteers in North Carolina*.

What is Criminal Trespass?

Generally, criminal trespass is defined as entry upon the property of another with notice that such entry is prohibited. The crime of trespass is relevant to citizen scientists because most of this type of work is likely to be carried out on land owned by another party.

In North Carolina, two categories of criminal trespass exist: first-degree trespass and second-degree trespass.

A person has committed **first-degree trespass** if, without authorization, the person enters or remains:

- On the premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
- In a building of another.

A person has committed **second-degree trespass** if, without authorization, the person enters or remains:

- On the premises of another after the person has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or
- In a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

What is Civil Trespass?

Civil trespass is the injury to the property or an injury to the use of the property without the consent or permission of the person legally entitled to possession of the real estate.

In North Carolina, the potential recourse for a property owner against a trespasser will follow the guidelines established by the North Carolina General Assembly in Chapter 99A of the North Carolina General Statutes and through the common law of the state. Chapter 99A sets forth the rights of a property owner to recover for damages caused by interference with their property rights.

Generally, three factors are used to determine whether a trespass to real property — land or structures — has occurred:

1. The plaintiff was in possession of the property at the time of the alleged trespass;
2. The defendant intentionally entered, caused entry, and/or remained present upon the plaintiff's property; and
3. The defendant's entry and/or continued presence was unauthorized.

If the three factors are met, then a trespasser could be ordered by a court to take one or more remedial measures. If the trespass did not cause damage, the trespasser may be required to pay for nominal damage, for example \$1, or a court may issue an injunction in the case of a continuing trespass.

However, if the property itself or an interest in the property suffers damage, a court may award the property owner compensatory damages, punitive damages or both. The monetary amount of these types of remedial awards can be significantly higher, depending on the nature and severity of the damage to the property.

Ocean Beach Public/Private Property Guidelines (Public Trust Doctrine)

In North Carolina, the laws governing beach access and property rights on ocean beaches, estuarine and public trust waters are contained primarily in the North Carolina General Statutes, as well as relevant state case law.

The public trust doctrine is the principle that certain natural and cultural resources are preserved for public use, and that the government owns and has a duty to protect these resources for the public's use. In North Carolina, the public has traditionally and customarily had access to enjoy and freely use the ocean beaches.

Under current North Carolina law, the public has the right to access the "wet sand beach" and the "dry sand beach." Under the state's common law public trust doctrine, navigable-in-fact waters and submerged lands lying seaward of the mean high water mark are public trust waters. The wet sand beach is considered part of these state-owned public trust lands.

However, public access is generally more limited on the dry sand beach, which is the area above the mean high water mark. Unless the dry sand beach has been nourished — where sand is added to the existing beach — as part of a publicly financed project, oceanfront property owners typically have legal title to the dry sand beach as part of their property. As codified under state law, the oceanward title of the property owner extends to the mean high water mark.

The extent to which the public enjoys a customary right to use the dry sand beach, whether the beach is nourished or natural, has been the subject of litigation in North Carolina. At the time of this writing, the North Carolina Court of Appeals affirmed the public's right to use all dry sand beaches in the state in a 2015 legal opinion in *Nies v. Town of Emerald Isle*. However, this case will be reviewed by the North Carolina Supreme Court.

For more on this area of law, see "North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century" by Joseph Kalo.

Despite the legal technicalities of public beach access, it should be generally recognized that one should not attempt to enter private property without permission from the owner.

Further Reading

- N.C. Gen. Stat. § 14-159.12.
- N.C. Gen. Stat. § 14-159.13.
- N.C. Gen. Stat. § 14-130.
- N.C. Gen. Stat. § 77-20(a).
- N.C. Gen. Stat. § 146-6(f).
- 27A N.C. Index 4th Trespass Summary.
- *Nies v. Town of Emerald Isle*, 2015 N.C. App. Lexis 958, 19 (N.C. Ct. App. Nov. 17, 2015).
- *Gwathmey v. State of North Carolina*, 464 S.E.2d 674 (1995).
- Kalo, Joseph (2005). "North Carolina Oceanfront Property and Public Waters and Beaches: The Rights of Littoral Owners in the Twenty-First Century," *North Carolina Law Review*, vol. 83, 1428-1504.

For More Information

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