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Ohio Revised Code

Section 2305.402 Duties owed to trespassers.

Effective: September 06, 2012
Legislation: Senate Bill 202 - 129th General Assembly

(A) As used in this section:

(1) "Possessor of real property" means the owner, lessee, renter, or other occupant of real property.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person other than a civil action for damages for a breach of contract or another agreement between persons.

(3) "Trespasser" means an individual who, without express or implied authorization, invitation, or inducement, enters real property purely for the individual's own purposes and convenience.

(4) "Child" means an individual under eighteen years of age.

(B) The possessor of real property does not owe a duty of care to a trespasser on the property except to refrain from willful, wanton, or reckless conduct that is likely to cause injury, death, or loss to the person of the trespasser.

(C) Notwithstanding division (B) of this section, the possessor of real property is liable in damages to a trespasser on the property or to any other person in a tort action for injury, death, or loss to the person of the trespasser that allegedly is caused by the possessor of the real property if, at the time the injury, death, or loss allegedly is caused, the possessor knows, or from facts within the possessor's knowledge should know or believe, that the trespasser is in a position of peril on the property, and the possessor of the property fails to exercise ordinary care to avoid causing that injury, death, or loss.

(D)(1) Notwithstanding division (B) of this section, the possessor of real property is liable in damages to a trespasser on the property who is a child, to a parent, guardian, or custodian of the child, or to any other person in a tort action for injury, death, or loss to the person of the child that allegedly is caused by an artificial condition on the real property if, at the time the injury, death, or loss allegedly is caused, all of the following apply:

(a) The place on the property where the artificial condition exists is a place upon which the possessor of the property knows or has reason to know that children are likely to trespass.

(b) The artificial condition is a condition that the possessor of the property knows, has reason to know, realizes, or should realize will involve an unreasonable risk of death or serious injury to those children.

(c) Because of their youth, the children who are likely to trespass on the property do not discover the artificial condition on the property or do not realize the risk involved in intermeddling with it or coming within the area made dangerous by it.

(d) The utility to the possessor of the property of maintaining the artificial condition and the burden of eliminating the danger involved in maintaining the condition are slight in comparison to the risk of injury, death, or loss to the person of those children.

(e) The possessor of the property fails to exercise reasonable care to eliminate the danger involved in maintaining the artificial condition or to otherwise protect the children who are likely to trespass on the property.

(2) Notwithstanding division (B) of this section, the possessor of real property is liable in damages to an adult person who trespasses on the property or to any other person in a tort action for injury, death, or loss to the person of the adult that allegedly is caused in an attempt by the adult person to rescue a child who trespasses on the property under the conditions specified in division (D)(1) of this section.

(E)(1) This section does not create a new cause of action or substantive legal right against the possessor of real property.

(2) This section does not affect any civil liability under another section of the Revised Code or the common law of this state of a possessor of real property with respect to trespassers under circumstances not covered by this section or with respect to individuals other than trespassers, including, but not limited to, civil liability to invitees or licensees on the property.

(3) This section does not affect any immunities from or defenses to tort liability established by another section of the Revised Code or available at common law to which a possessor of real property may be entitled in connection with injury, death, or loss to the person or property of a trespasser on the property, including, but not limited to, self-defense or defense of third persons.

(4) This section does not affect any criminal liability that the possessor of real property may have for injury, death, or loss to the person or property of a trespasser on the property.

(5) This section does not affect any immunities from or defenses to civil liability established by another section of the Revised Code or available at common law to which a possessor of real property may be entitled in connection with injury, death, or loss to the person or

property of a trespasser on real property owned, leased, rented, or occupied by another person, including, but not limited to, self-defense or defense of third persons.