



Risk Management

by Michael Gentile, J.D.

Dealing with the dreaded trespasser

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The term trespasser conjures up all kinds of images of a clandestine interloper sneaking around in dark corners. In reality, the term is merely a legal designation for the status one possesses in relation to another's property. When that property is a hotel or restaurant, one can become a trespasser in a variety of ways. Once that person achieves status as a trespasser, management may begin the process of removing the trespasser from their premises with limited legal exposure. This article examines the ways trespassers are established and the methods with which they should be dealt with.

In a hotel or restaurant setting, the status of trespasser can be established in one of the following ways:

- ❖ **Traditional Method** - Someone disregards a "no trespassing" sign or sneaks onto hotel grounds, perhaps by scaling a fence or entering a building behind someone using a keyed entry. They have no business purpose to be on site, no intention to become a paying customer, nor do they have permission. While there, the trespasser(s) may use the pool, fitness center or other facilities. The law states that a hotelier's legal duty to these persons is to refrain from any affirmative act to injure them. In most states, the hotel has no other responsibility to them, primarily because they have no right to be there and most often management does not know of their existence.
- ❖ **Non-Guests and Potential Guests** - On a hotel or restaurant property it is common to find people who are undecided about whether to stay or to eat at a location. Because hotels and restaurants are deemed to be "places of public accommodation," it is generally accepted that outside individuals have permission to be on site. Once it is clear, however, that they will not become guests or patrons, they should leave. If asked to do so and they do not vacate the premises, outsiders then become trespassers and the standard of care as outlined above applies.
- ❖ **Former Guest** - A person who was a guest at the property and has been asked to leave the property for a valid reason but declines to do so becomes a trespasser. This is often a difficult situation to assess because the trespasser was initially on site legally as a paying customer. The same standard of care would apply once trespasser status is established, notwithstanding the fact that management is aware of his presence.

Once a trespasser has been identified, the more difficult issue becomes what management can do, both legally and practically, to remove such a person from the premises. The answer lies in a process commonly known as "eviction."

The eviction process begins when a person is identified as a trespasser under one of the scenarios above. The first step should be for management or security to inform the person that he is no longer welcome on the premises and should leave. Some state or municipal codes may require a specifically worded "Trespass Warning" be read or served to the unwelcome individual before he may be accorded trespasser status. Check with local legal counsel and train security and management personnel to strictly follow procedures appropriate for your hotel's locale and jurisdiction.

Though management retains the right to maintain control over their property, as they deem appropriate, it should be prepared to offer reasons for its action if the unwelcome person should inquire. In the case of a former guest, there are limited specific reasons to have him evicted. Those reasons may include:

- Nonpayment
- Overstaying
- Intoxication with disorderly conduct
- Contagious illness
- Breaking house rules

Any other reason given for evicting a guest or former guest could result in liability for wrongful eviction.

If the person being evicted refuses the request to immediately leave the premises, management should repeat it. If the person continues to refuse, management should call police to assist. Never use physical force or touch an individual except for self-defense or when others are in immediate danger at the hand of a trespasser. Generally, it is always advisable to call the police. They are trained and equipped to handle such situations.

However, there may be situations where the person becomes aggressive or out of control and management or security must use force. The question then becomes how much force is reasonable in such situations?

Keep in mind that the standard of care owed to a trespasser is to not do anything of an affirmative nature to injure the trespasser. The amount of force to be used is that amount of force necessary to evict the trespasser or to counter the force used by that person. That determination is made on a case-by-case basis and ultimately is a question of fact. The key for management to remember is to be sure that the use of force is justified at the outset to protect employees and patrons or other guests from harm.

Trespassers are unwanted, unlawful and can be potentially dangerous visitors to a hotel. Once they have been identified as such, it is the right of management to require that they leave, even to the extent that force may be used to facilitate that result. Just remember that similar to all other management matters, it is important to act reasonably, even when others may not. ✧

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