

Our zoning administrator has opined that, if property is not posted, the public can enter it. This could be one hundred acres of forest property or a quarter-acre residential lot. He says the same goes for the health officer. Is he correct?

Under the common law, every person's land is deemed to be enclosed and every unauthorized, and therefore unlawful, entry into private property of another is a trespass for which the trespasser may be civilly liable. Of course, this rule is not absolute because there are certain areas of private property such as a driveway or front walkway, which typically carry some implied notion that members of the public can enter without prior permission of the owner.

Vermont also has a criminal trespass statute, 13 V.S.A. § 3705. This statute makes it a crime to enter land if notice against trespass has been given by actual communication from the landowner or by a law enforcement officer acting on the landowner's behalf. Notice against trespass can also be accomplished by signs or placards designed and situated to give reasonable notice (i.e., "posting"). This means that one could potentially be held liable in civil court for trespass on unposted land, but not be guilty of violating the state's criminal trespass statute.

The bottom line is that local officials must remember that they are government actors and a whole range of constitutional protections can come into play when the local officials enter property without permission. Though exceptions do exist, as a rule of thumb, local officials should limit their unauthorized entry into private property to the "public" areas of that property such as the driveway, front walkway, and perhaps an unenclosed front porch and should not be entering structures, houses, or other areas of private property without the prior permission of the property owner. If local officials have been put on notice that their entry into public areas of private property is not authorized, they should not enter these areas without the prior permission of the property owner or a court order.

- Jim Barlow, Staff Attorney, VLCT Municipal Assistance Center

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