

Land Use Issues Explained

You shouldn't have to be a lawyer to understand New Hampshire's landowner and access issues. But it can be a little confusing, and there are a few myths about what you can and can't do as a hunter, angler or a landowner.

New Hampshire Fish and Game's conservation officers get a lot of questions about landowner issues. Here are a few of those questions... and the answers.

LANDOWNER QUESTIONS:

I've got children and pets near my home and I'm concerned about hunters coming too close to my house. What can I do?

As a landowner, you have the right to regulate activities on your property. You may have serious and legitimate concerns about hunting near your home. But you can also think about what exactly what it is you're concerned about. Is it children? Pets? Livestock? Maybe you don't mind if hunters use a portion of your land, but not near your house?

Though one option is to post your entire property against all public access, that's not always an appropriate response to a specific issue. And while posting one parcel here and there may not seem like a big deal, it adds up when many lands are posted against public use. Collectively, we all pay the consequence of dwindling access opportunities.

Consider signage options that will address your concerns. Among them: "Hunting by Permission Only," "Caution – Horses," or "Keep Out – Safety Zone." With the latter option, you can establish a signed safety perimeter around your house, while keeping the rest of your land open to hunters and others.

New Hampshire Fish and Game's Cooperative Sign Program can help landowners find the right sign. For information, call (603) 271-3127.

A few other things to consider:

- By state law (RSA 207:3-a), a hunter (or anyone else, for that matter) shall not discharge a firearm or bow and arrow within 300 feet of a permanently occupied dwelling without the landowner's permission. Doing so is a misdemeanor.
- New Hampshire has an excellent record of hunting safety. Each year since 1994, there have been fewer than eight shooting injuries involving hunting...and about 78,000 people hunt in the state every year. In 2001, there were four shooting-related hunting incidents. Very seldom do any incidents involve non-hunters.

What are the legal requirements for posting property?

Under state law (RSA 635:4), the legal manner of posting calls for posting durable signs with any words describing the physical activity prohibited, such as "No Hunting or Trespassing," in letters at least 2 inches high, and with the owner's name and address. The signs shall be no further than 100 yards apart on all sides of the property and shall also be posted at gates, bars and all commonly used entrances.

Can I allow others to hunt on my property, even if I've posted it?

Yes, with verbal or written permission.

And as a hunter, you can ask a landowner if you can hunt on his or her posted property. But you have to ask and receive verbal or written permission.

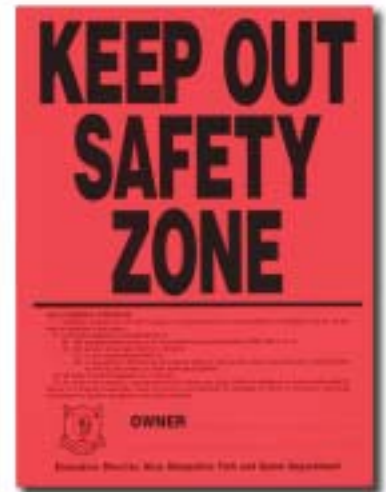
It almost goes without saying, but yes, you can hunt on your own land, even if you've posted it.

A hunter walks past a posted sign – is it legal? If he's got the landowner's permission, yes. Without landowner permission, the hunter could be given a summons for criminal trespass. As a hunter or a landowner, it's important to know the laws of the land.

BY ERIC ALDRICH AND
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Signs like these are available through Fish and Game's Cooperative Sign Program. A conservation officer can help you choose the right sign for your land. For information, call 603-271-3127 or a regional office.



In New Hampshire and elsewhere in New England, we enjoy a long, proud tradition of public use of private land.

Can I report a trespasser on my neighbor's property?

Law enforcement can only act on a complaint of trespassing from the landowner.

The reasoning is fairly simple: Only the landowner would know who he or she has allowed or hasn't allowed access to that land.

A neighbor might be rightfully suspicious, but wouldn't necessarily know of any arrangements the landowner has made. If you have concerns, you might call your neighbor.

If I make a trespass complaint, do I have to go to court?

Yes. Law enforcement officers can only act if you – as a landowner – are willing to go to court to testify against a person charged with trespassing on your land.

Among the questions you'll be asked is whether you gave permission to the accused for access to your land.

If a hunter gets hurt on my land, am I liable?

No. Under RSA 212:34, a landowner owes "no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping" or other recreational uses.

But there are some exceptions. A landowner has a duty to warn about any dangerous conditions or use that may exist.

Let's say you have a large old well on your land, and you don't take precautions to warn people about it. A hunter comes by and falls in the well, suffering serious injuries. You could be liable – and could pay civil damages – for not providing warnings or other safeguards about the hazard.

Another exception is for landowners who charge admission to people to use their land for hunting or other activities.

HUNTER QUESTIONS:

Can I hunt on private land that's not posted?

Yes. But it's always good to ask the landowner first.

Common law in New Hampshire extends the privilege of public access to private lands that are not posted. You won't find that in state law books, because it is common law, going back to the philosophy of New England's early colonists and supported over the centuries by case law. Our forefathers knew the importance of balancing the need for landowners' rights with that of the public good. On one hand, the landowner can make decisions about his or her land. On the other hand, the public should have limited rights to use and enjoy that land. The colonists held similar democratic notions about rivers, lakes, fish and wildlife.

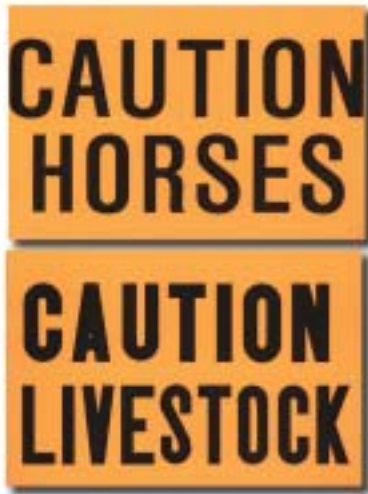
Today, it's easy to take this notion for granted. In New Hampshire and elsewhere in New England, we enjoy a long, proud tradition of public use of private land.

This tradition also comes with a risk. A landowner who finds trash, disrespect or other problems can easily decide to post his or her land.

Residents of some Western states find this notion of private land/public use very strange. Hunters in some states pay hundreds of dollars in annual fees to landowners to hunt their lands. It's just another cost of hunting.

Other states have what's called reverse posting. Access is limited to land that's specifically posted for that use. If it's not posted, you can't go on it.

And some states require written landowner permission for hunting.



Can I hunt on posted land if I have the landowner's permission?

Yes. As with the question above for landowners, you can hunt on land – even if it's posted – if you have the landowner's permission – written or verbal.

Can I hunt on land that's posted, but not under the legal manner of posting?

No. Even if a landowner doesn't meet the letter of the law in RSA 635:4 (see above, legal manner of posting), a hunter or hiker cannot use land where the landowner has made a reasonable effort to post it against trespassing.

Let's say a landowner long ago put two or three "No Trespassing" signs where his land abuts a town road. But he didn't put up signs all the way around his property, as the law requires. Now let's say some hunters see the aging signs, but decide to reach the man's land from another direction. Those hunters could be charged with criminal trespass.

Here's what the law says (RSA 635:2): "Criminal trespass is a misdemeanor if... the person knowingly enters or remains... in any secured premises... Secured premises means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders."

Do I need a landowner's permission to put up a tree stand?

You need the landowner's written permission only if your tree stand would cause any damage to the tree. If your tree stand involves nails or screws into the tree, you need the landowner's permission.

Most portable climbing tree stands or ladder

tree stands don't damage the tree and don't require a landowner's permission.

If I cut branches or shooting lanes, do I need a landowner's permission?


Yes. Written permission is required if you're planning to cut or damage any branches or trees. Fish and Game's Law Enforcement Division supplies forms for tree stands and cutting.

Do I need a landowner's permission for a hunting blind?

For a freestanding temporary structure, you don't need the landowner's permission. But if you're going to cut limbs or trees, written permission is required.

TIPS FOR THE HUNTER:

How can I encourage a landowner to keep his or her land open and unposted?

- Let the landowner know that various signage options are available.
- If you can determine who the landowner is, ask permission BEFORE you hunt that land, whether it's posted or not. A good way to determine who owns a particular piece of land is to check the town's tax maps.
- Make sure the landowner understands the value of some degree of public access to that land.
- Give the landowner a piece of your harvest. A tenderloin would be nice, but even a steak or two would delight the landowner. It's a great way to say thanks.
- Keep the land neat. If you see litter, pick it up.
- Be polite. Always. To the landowner, to the landowner's neighbors (they own land, too) and to anyone you may meet on the land. As a hunter, your image is key to keeping the tradition. 

A good way to determine who owns a particular piece of land is to check the town's tax maps at the town office.