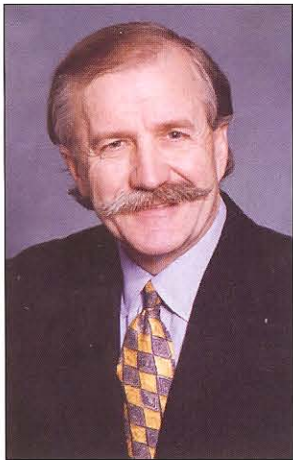


# equine attractive nuisance



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**H**OW CAN SOMETHING BE BOTH ATTRACTIVE AND A NUISANCE AT THE SAME time? When it comes to horses, it may be tempting to suggest that a good moving or good looking show horse with bad barn manners would qualify as an attractive nuisance. But, from a legal standpoint you would be wrong. An attractive nuisance is a principle of law that provides an exception to the general rule that a landowner does not owe a duty of care to a trespasser. In other words, a land owner does owe a duty of care to certain trespassers. The trespassers that the law protects, not surprisingly, are minor children. They are referred to as infant trespassers.

The doctrine of attractive nuisance evolved because children do not always appreciate the risk of harm involved in an object or condition of the land. An attractive nuisance is an object or condition of the land that entices children to trespass. Generally, an attractive nuisance is not a natural condition of the land. Rather, it is usually a condition created or allowed to exist on the landowner's property. For example, a hay field or pond may not qualify as an attractive nuisance, but if a piece of farm equipment is left on the hay field, or if there is a rope tied to a tree near the pond, it may very well constitute an attractive nuisance.

Although there is no list of specific conditions that include all attractive nuisances, there are generally five conditions that must be met in order for a landowner to be liable for damages to an infant trespasser. According to the Restatement of Torts, Second which is followed by many jurisdictions, they are as follows:

- The place where the condition exists is one where the landowner either knows or has reason to know that children are likely to trespass
- The condition is one that the landowner knows or has reason to know involves an unreasonable risk of death or serious bodily harm to children
- The children because of their youth do not discover or appreciate the risk involved in the condition
- The importance to the landowner of maintaining the condition and the burden of eliminating the danger are slight compared to the risk to children involved
- The landowner fails to exercise reasonable care to eliminate the danger or otherwise protect the children from the harm

Although placing signs to warn children of the danger may be helpful, it will not always work, especially if the child is unable to read or appreciate the significance of the warning. There are, however, certain steps a landowner can take to reduce potential liability:

- Inspect your property regularly for potential hazards
- Depending on the hazard, either eliminate if possible, or reduce the danger by locking, fencing or otherwise securing the condition
- Check your barn, fences and gates regularly to make sure your horses are secured properly. Although horses are not automatically considered to be an attractive nuisance, they very well may be considered as such if they have known dangerous propensities.
- If you do have any such horses keep them away from areas that are easily accessible to children
- Do not allow children to trespass on your property. Contact the parents if possible to warn them of the dangers and make a record of your actions in doing so.

The more proactive you are in eliminating and reducing dangerous conditions on your property, the less likely you will be held liable for damages by an invited guest as well as a trespassing child.

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