

N.C.P.I.—Civil—805.64
DUTY OF OWNER TO TRESPASSER – INTENTIONAL HARMS
GENERAL CIVIL VOLUME
JUNE 2013
N.C. Gen. Stat. § 38B-3(1)

805.64 DUTY OF OWNER TO TRESPASSER – INTENTIONAL HARMS¹

NOTE WELL: Use for claims arising on or after 1 October 2011. For claims arising before 1 October 2011, use N.C.P.I.—Civil 805.65.

If the defendant contends that the plaintiff trespasser entered the land or building of the defendant owner, possessor, lessee or other occupant of land with the intent to commit a crime, then the instruction regarding reasonable use of force also should be given with this instruction. See N.C.P.I.—Civil 805.64A

The (*state number*) issue reads:

“Was the plaintiff’s [injury] [death] [caused by the willful or wanton conduct of the defendant] [intentionally caused by the defendant]?”

(You will answer this issue only if you have answered the (*state number*) issue “No” in favor of the defendant.² If you answered the (*state number*) issue “Yes” in favor of the plaintiff, you will answer the (*state number*) issue and not this one.)³

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, [that the defendant acted willfully or wantonly and that such willful or wanton conduct

¹ See generally *Bell v. Page*, 271 N.C. 396, 156 S.E.2d 711 (1967); *Dean v. Constr. Co.*, 251 N.C. 581, 111 S.E.2d 827 (1960); *Hood v. Queens*, 249 N.C. 534, 107 S.E.2d 154 (1959); *Jessup v. Railroad Co.*, 244 N.C. 242, 93 S.E.2d 84 (1956); *Wagoner v. Railroad Co.*, 238 N.C. 162, 77 S.E.2d 701 (1953); *McLamb v. Jones*, 23 N.C. App. 670, 209 S.E.2d 854 (1974).

² Give only where there is a preliminary issue as to the legal status of the plaintiff, i.e., lawful visitor or a trespasser (see N.C.P.I.—Civil 805.50), and the jury has found the plaintiff was a trespasser.

³ Give only where there is a preliminary issue as to whether the plaintiff was a lawful visitor or a trespasser. See N.C.P.I.—Civil 805.50. If the jury has found the plaintiff was a lawful visitor, then the jury shall be instructed to answer the issue set forth in N.C.P.I.—Civil 805.55.

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resulted in the plaintiff's [injury] [death]] [that the defendant intentionally caused the plaintiff's [injury] [death].]⁴

In North Carolina, the general rule is that [an owner] [a person in possession] [a lessee] [an occupant] of land does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.⁵

However,

[An owner] [A person in possession] [A lessee] [An occupant] of land is under a duty not to cause [injury] [death] to a trespasser by willful or wanton conduct.⁶

[An owner] [A person in possession] [A lessee] [An occupant] of land is under a duty to not intentionally cause [injury] [death] to a trespasser.⁷

[An owner] [A person in possession] [A lessee] [An occupant] of land may be subject to liability if the trespasser's [injury] [death], [either:]

[resulted from the [owner's] [possessor's] [lessee's] [occupant's] willful or wanton conduct;] [or]

[was intentionally caused by the [owner] [person in possession] [lessee] [occupant] of the land.⁸

4 N.C. Gen. Stat. § 38B-3(1) (2011).

5 N.C. Gen. Stat. § 38B-2.

6 N.C. Gen. Stat. § 38B-3(1).

7 *Id.*

8 *Id.*

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[An act is willful if the [owner] [person in possession] [lessee] [occupant] of the land intentionally⁹ fails to carry out a duty imposed by law or contract which is necessary to protect the safety of persons or property.¹⁰

[An act is wanton if the [owner] [person in possession] [lessee] [occupant] of land acts in conscious or reckless disregard for the safety of others.¹¹]

[An act is intentional if the [owner] [person in possession] [lessee] [occupant] of land intended to cause [injury] [death] to the plaintiff trespasser.¹² A person acts intentionally if *he* desires to cause the consequences of *his* act or believes that the consequences are substantially certain to occur.¹³ Intent may be proven by direct evidence or inferred from the circumstances.]

(The [owner] [person in possession] [lessee] [occupant] of land is not required to anticipate the presence of a trespasser.)

The plaintiff not only has the burden of proving the defendant's [willful or wanton] [intentional] conduct, but also that the plaintiff's [injury] [death] [resulted from the defendant's willful or wanton conduct] [was intentionally caused by the defendant].

9 For an instruction on intent, see N.C.P.I.—Civil 101.46. *See also infra* note 13.

10 *Abernathy v. Consol. Freightways Corp.*, 321 N.C. 236, 362 S.E.2d 559 (1987).

11 *Bullins v. Schmidt*, 322 N.C. 580, 369 S.E.2d 601 (1988).

12 N.C. Gen. Stat. § 38B-3(1) (2011). For an instruction on intent, see N.C.P.I.—Civil 101.46.

13 N.C.P.I.—Civil 101.46. *See, e.g., Jones v. Willamette Indus.*, 120 N.C. App. 591, 594, 463 S.E.2d 294, 297 (1995); *State v. Alston*, 91 N.C. App. 707, 714, 373 S.E.2d 306, 312 (1988); *State v. Locklear*, 84 N.C. App. 637, 643-44, 353 S.E.2d 666, 670 (1987); *State v. Bright*, 78 N.C. App. 239, 243, 337 S.E.2d 87, 89 (1985).

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As to this (*state number*) issue, the plaintiff contends, and the defendant denies, that the defendant engaged in [willful or wanton] [intentional] conduct in one or more of the following ways: (*Read all contentions of [willful or wanton] [intentional] conduct supported by the evidence.*)

The plaintiff further contends, and the defendant denies, that [the plaintiff's [injury] [death] resulted from the defendant's willful or wanton conduct] [the defendant's intentional conduct caused the plaintiff's [injury] [death]].

I instruct you that [willful or wanton] [intentional] conduct is not to be presumed from the mere fact of [injury] [death].

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant acted [willfully or wantonly] [intentionally] (in any one or more of the ways contended by the plaintiff) and that [the plaintiff's [injury] [death] resulted from the defendant's willful or wanton conduct] [the defendant intentionally caused the plaintiff's [injury] [death]], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.