

N.C.P.I.—Civil—805.64C  
DUTY OF OWNER TO TRESPASSER: POSITION OF PERIL  
GENERAL CIVIL VOLUME  
JUNE 2013  
N.C. Gen. Stat. § 38B-3(3)

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805.64C DUTY OF OWNER TO TRESPASSER: POSITION OF PERIL

*NOTE WELL: Use for claims arising on or after 1 October 2011.*

The (*state number*) issue reads:

“Was the plaintiff’s [injury] [death] caused by the defendant’s failure to exercise ordinary care not to injure the plaintiff when the plaintiff was in a position of [peril] [helplessness]?”

(You will answer this issue only if you have answered the (*state number*) issue “No” in favor of the defendant.<sup>1</sup> If you answered the (*state number*) issue “Yes” in favor of the plaintiff, you will answer the (*state number issue*) and not this one.<sup>2</sup>)

On this issue the burden of proof is on the plaintiff. That means that the plaintiff must prove, by the greater weight of the evidence, the following four things:<sup>3</sup>

First, that the plaintiff was in a position of [peril] [helplessness] on the property of the defendant.<sup>4</sup>

Second, that the defendant discovered the plaintiff’s [peril] [helplessness].<sup>5</sup>

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<sup>1</sup> 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 that the plaintiff was a trespasser.

<sup>2</sup> 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 that 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 instead of this instruction.

<sup>3</sup> N.C. Gen. Stat. § 38B-3(3) (2011).

<sup>4</sup> Id.

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Third, that the defendant failed to exercise ordinary care not to injure the plaintiff.<sup>6</sup> Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect *himself* and others from [injury] [death].

And Fourth, that such failure by the defendant proximately caused the plaintiff's [injury] [death].

Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [death], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [death] or some similar injurious result.

There may be more than one proximate cause of [an injury] [death]. Therefore, the plaintiff need not prove that the defendant's conduct was the *sole* proximate cause of the [injury] [death]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's conduct was a proximate cause.

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 plaintiff was in a position of [peril] [helplessness] on the defendant's property; and that the defendant discovered the plaintiff's position of [peril] [helplessness]; and that the defendant failed to exercise reasonable care not to injure the plaintiff; and that such failure proximately caused the plaintiff's [injury] [death]; then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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5 N.C. Gen. Stat. § 38B-3(3).

6 Id.

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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.

