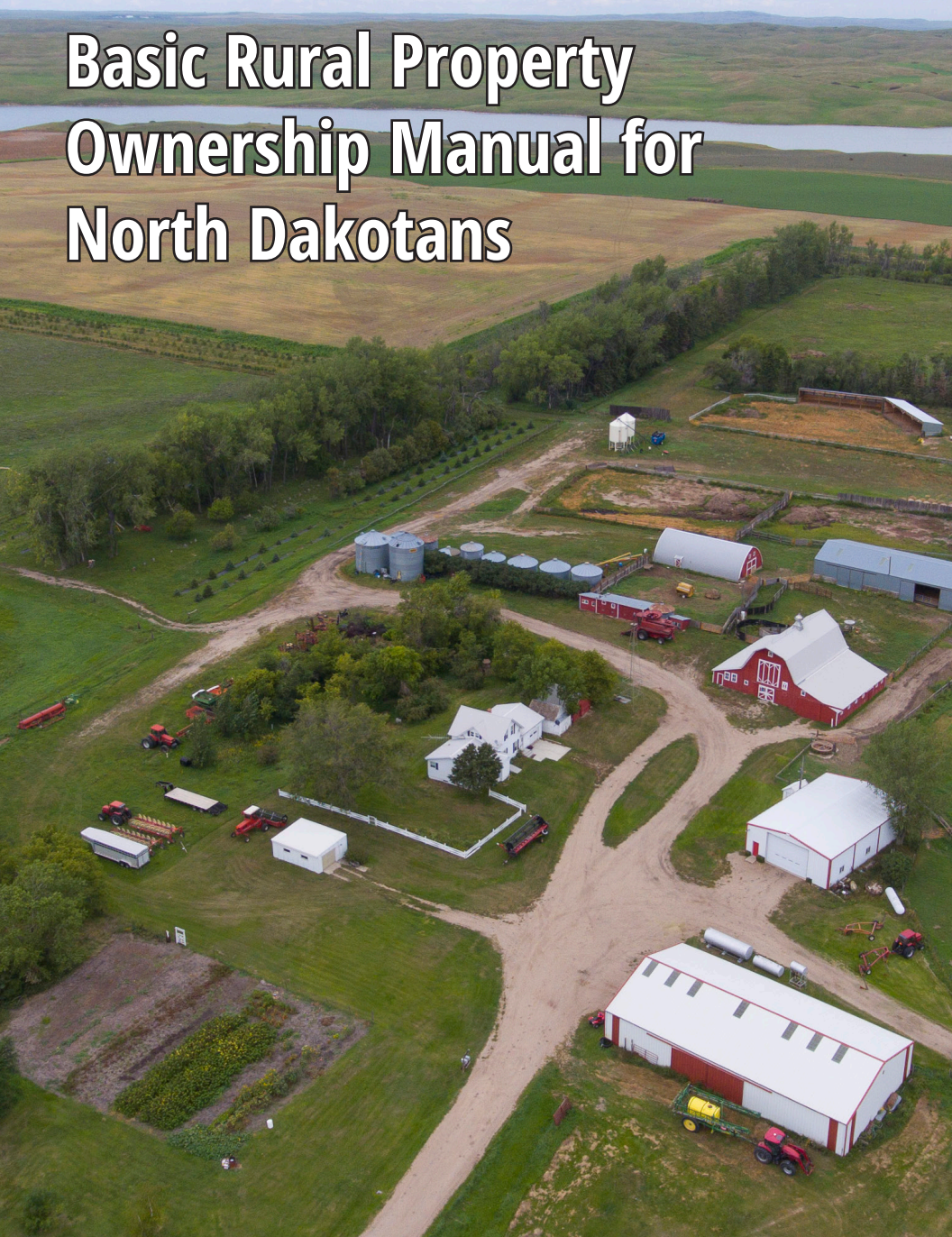




Basic Rural Property Ownership Manual for North Dakotans





YOUR LAND YOUR RIGHTS

North Dakota Farm Bureau shares this Basic Rural Property Ownership Manual with you to inform you and help protect you as a North Dakota rural property owner.



This Manual was developed as a collaboration between North Dakota Farm Bureau and Ohnstad Twichell. Seeing the whole picture and understanding the implications of one decision on other aspects of a client's life and legal needs matters -- Ohnstad Twichell's collaborative, team-based approach to the law ensures each client receives the highest quality legal advice from a specialist in each area of their legal needs, all in one place. Ohnstad Twichell has specialists to guide you through farm transition planning, trust and estate planning, probate, real estate, litigation, and so much more.

Ohnstad Twichell proudly serves all of North Dakota's rural communities from its offices located in Maddock, Hillsboro, Casselton, Page, and West Fargo. You can find the right attorney to handle your legal needs by submitting a request for follow up at ohnstadlaw.com/contact/ or by calling the office closest to you.

WEST FARGO
Telephone:
701-707-0310

HILLSBORO
Telephone:
701-404-8814

CASSELTON
Telephone:
701-404-8197

MADDOCK
Telephone:
701-997-0019

PAGE
Telephone:
701-707-0310



Keven Kercher navigates clients through farm transition planning, trust and estate planning, probates, and commonly handles related matters such as real estate transactions and estate tax issues.



David Piper assists clients with zoning issues, real estate transactions ranging from land sales to easements with wind, solar, and oil companies, and real estate-related litigation.



Brent Boeddeker guides clients through farm transition planning, trust and estate planning, probates, and commonly handling related matters such as real estate transactions and sugar beet agreements.



Tyler Leverington represents business owners in all stages and aspects of their business. He reviews, negotiates, and drafts contracts, and guides his clients through situations ranging from entity creation to ownership disputes and the sale of their business.



Brian Larson helps clients navigate the complicated world of trust and probate disputes to ensure his clients rights are protected after the loss of a loved one.



Andrew Cook zealously represents clients when litigation becomes necessary, strategically navigating the judicial system to reach the outcomes his clients need.

*****Ohnstad Twichell assisted in the creation of this publication, and acknowledges there are other firms in North Dakota capable of representing landowner issues.*****

INTRODUCTION

With property ownership comes rights and responsibilities. In this Basic Rural Property Ownership Manual, you will find the following topics:

- Easements
- Right to Organize and Negotiate as a Group
- Zoning and Nonconforming Land Use
- Eminent Domain
- Drainage and Water
- Open Burning
- Oil and Gas Leasing
- Open Fields Doctrine
- Trespassing and Landowner Liability
- Boundary Disputes and Property Rights
- Animal Control



***Disclaimer:** This Manual contains general statements of the law; it is not legal advice and should not be relied upon. All statutes and laws referenced herein are subject to change by legislative actions, court decisions, or initiated measures. Furthermore, individual situations may include nuance or details which are not encompassed within or considered by this Manual. North Dakota Farm Bureau can provide references to vetted attorneys for any issue you may have. An investment in quality legal counsel can save you significant amounts of money in the long term and help secure the outcome you need.

***Disclaimer: All Statutes and Laws are subject to change by legislative actions, court decisions or initiated measures.**

EASEMENTS

An easement is a legal right to use another's land for a specific, limited purpose. It does not grant ownership but permits the holder to use the property in a manner agreed upon with the landowner.

PROCUREMENT

Easements in North Dakota can cover a variety of rights, including drainage, historic preservation, light and air, right of way, solar access, and utility access. There are several ways in which easements in North Dakota may be created, including the following:

- Easement by Necessity
- Express Easements
- Implied Easements
- Prescriptive Easements

CHALLENGING AN EASEMENT

Challenging an easement can be limited and requires specific circumstances to be successful in court. To avoid having to challenge an easement, a landowner should conduct due diligence prior to purchasing a piece of property to ensure that they know if any easements were placed on the property and if so, what type of easements were granted.



NEGOTIATING EASEMENTS WITH MULTIPLE PROPERTY OWNERS

Negotiating easements with multiple property owners in North Dakota requires careful planning, clear communication, and a willingness to accommodate diverse interests. By following the strategies outlined in this Manual, you can negotiate successful easement agreements that protect your farming operations and maintain positive relationships with neighboring landowners.

1. **Start with clear communication.** Before entering into any negotiations, it is essential to clearly define the objectives and needs regarding the easement.

Landowner Easement Rights

- Right to Full Disclosure
- Right to Fair Compensation
- Right to Consultation and Representation
- Right to Protect Land Use
- Right to Termination and Enforcement
- Right to Privacy and Safety
- Right to Public Interest Consideration
- Right to Organize and Negotiate as a Group

Entities acquiring easements usually want to avoid the use of Eminent Domain. Time is on the property owner's side. Organizing as a group benefits both parties by saving time, legal fees, and helping avoid disputes between neighbors and the stress of negotiating on your own.

Types of Easements

- Easements by Necessity
- Express Easements
- Implied Easements
- Prescriptive Easements

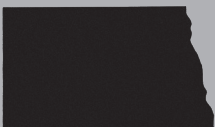


Did You Know?

- The production of methane, the oldest natural gas, was first reported in North Dakota in 1892 near Edgeley, North Dakota

- North Dakota ranks as the nation's 3rd largest ethanol-producing state, following Texas and New Mexico

- North Dakota's oldest commercial hydrocarbon production was established in 1929 when the Cedar Creek gas field was extended into Bowman County from Montana



2. **Tailor the Agreement to the specific objective.** Once the negotiation process is complete, draft a formal easement agreement outlining the agreed upon terms and conditions. It is important to clearly specify the rights and obligations of each party, including the scope of the easement, permitted uses, maintenance requirements, and any provisions for termination or modification. Before finalizing the easement, seek legal review and approval from a qualified attorney. Negotiating easements requires careful planning, effective communication, and a commitment to finding mutually beneficial solutions. If you require assistance or guidance through the process, don't hesitate to consult with a qualified attorney to ensure that your agreements are legally sound and enforceable.

3. **Engage legal counsel.** This ensures that the easement is appropriately drafted and satisfies all legal requirements.

OIL AND GAS UNITIZATION

Unitization is a legal process under North Dakota law that allows for the collective operation of an oil or gas field by combining multiple tracts of land into a single unit. This process is essential for efficient resource extraction, particularly in cases where a reservoir extends across multiple properties. By pooling these tracts, unitization facilitates the coordinated development and production of oil and gas, maximizing recovery while minimizing environmental impacts and avoiding the drilling of unnecessary wells.

Key Points:

- **Purpose:** Unitization aims to prevent waste of resources, protect correlative rights of landowners, and ensure that oil and gas production is managed efficiently and economically.

- **Formation:** A unit can be formed voluntarily through agreements among property owners and operators. If voluntary agreement is not possible, the North Dakota Industrial Commission ("NDIC") can mandate unitization, if a certain percentage of owners agree that it is necessary and that it is in the public interest.

- **Regulation:** The NDIC oversees unitization, ensuring that the process complies with state laws and regulations. The Commission evaluates the technical and economic feasibility of the proposed unit, balancing the interests of all stakeholders.

- **Benefits:** Unitization reduces operational costs, enhances recovery of oil and gas, and diminishes the environmental footprint of drilling activities. It also allows for equitable distribution of production proceeds among property owners within the unit.

- **Challenges:** Landowners may have concerns about loss of control over their property or about how revenues are shared. Legal disputes can arise if not all parties agree to the unitization plan.

Unitization under North Dakota law is a critical tool for the responsible development of oil and gas resources, promoting collaboration among landowners and operators to optimize production while protecting individual rights and the environment.





RIGHT TO ORGANIZE AND NEGOTIATE AS A GROUP

In North Dakota, landowners have the right to organize and negotiate as a group. Stating and maintaining a case collectively is an effective tool in negotiating important deals, such as essential deals for roads and transmission.

Hiring professional legal counsel can be instrumental in helping landowners understand and leverage the right to organize and negotiate as a group as well as other rights of landowners.

Landowners have found that organizing and negotiating collectively can be one of the most effective ways to protect your individual interests when dealing with easements and right-of-way disputes.



"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly may not be submitted to vote; they depend on no elections." -- Robert H. Jackson

ZONING AND NON-CONFORMING LAND USE

ZONING REGULATIONS AND RESTRICTIONS

Political subdivisions such as counties, cities, and townships have authority to engage in comprehensive planning and management of the uses and activities allowed in differing “districts” or geographical areas within their jurisdiction. The scope of this authority is limited by the North Dakota Century Code and varies across subject matters.

Zoning regulations generally identify uses and activities that can be undertaken as a right, uses and activities that can be undertaken only after a permit is granted, and uses and activities that are not allowed in given zoning district.

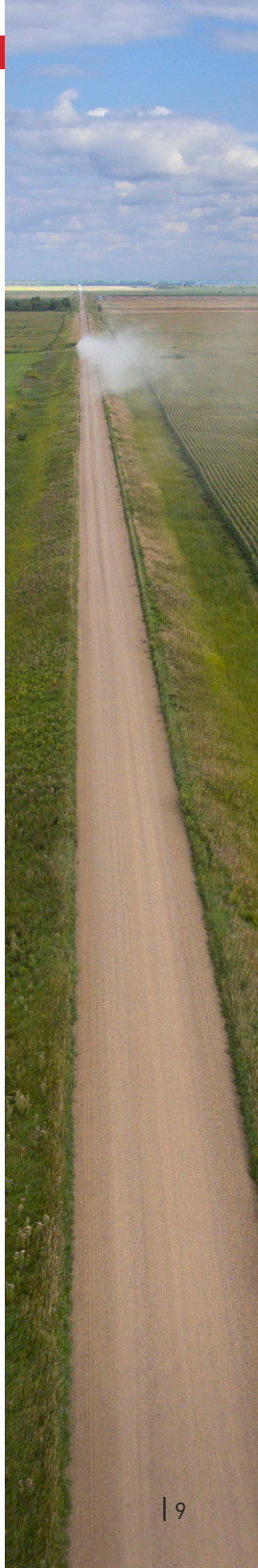
The validity or enforceability of a zoning ordinance can be challenged without respect to the duration that has passed since the adoption of the ordinance. However, a decision on a zoning-related request, such as the denial of a permit application or variance request, must be appealed within a very short time following the decision regarding the issue.

Specific processes and deadlines vary with the type of political subdivision making the decision, but it is critical that parties wishing to challenge a zoning decision act immediately after an adverse outcome, or such parties risk losing the right to appeal.

NONCONFORMING LAND USE

Nonconforming land uses are uses that were legal at the time they were established, but do not conform with current zoning regulations. Examples include existing properties that do not meet current setback requirements, height and density requirements or limitations, or are utilized for certain agricultural practices that are no longer allowed in a given district. These non-conforming uses are generally allowed to continue in a manner consistent with the historical, now “grandfathered” use.

Landowners engaged in nonconforming use must be careful; an uninformed decision can result in the loss of nonconforming use or grandfathered status.





The most common occurrences resulting in the loss of nonconforming use status and the associated rights include (i) abandonment or cessation of the nonconforming use (a business located in a residential zoning district may not be able to re-open as a business after closing its doors for a year); (ii) an expansion or other enlargement of the physical size of a nonconforming use; (iii) a change or move away from the nonconforming use; and (iv) destruction or demolition of more than 50% of the premises.

Following any of these types of occurrences, a nonconforming use is likely to be required to be brought into conformance with current zoning regulations.

VARIANCES

A variance is an authorization by a political subdivision to allow a specific use or activity, despite such use or activity neither qualifying as a nonconforming use nor otherwise being allowed in the applicable location. Political subdivisions have broad discretion to grant or deny requests for variances. Denials of requests for a variance can be appealed by the requesting party but must be appealed within a very short period after the decision, or the right to appeal may be lost. Decisions granting variances may be subject to appeal by third parties who have alleged that they will be negatively impacted by the proposed use or activity. Third party appeals are typically subject to the same short deadlines governing an appeal by the requesting party.



"What we need is not more federal government, but better local government." – Calvin Coolidge

EMINENT DOMAIN

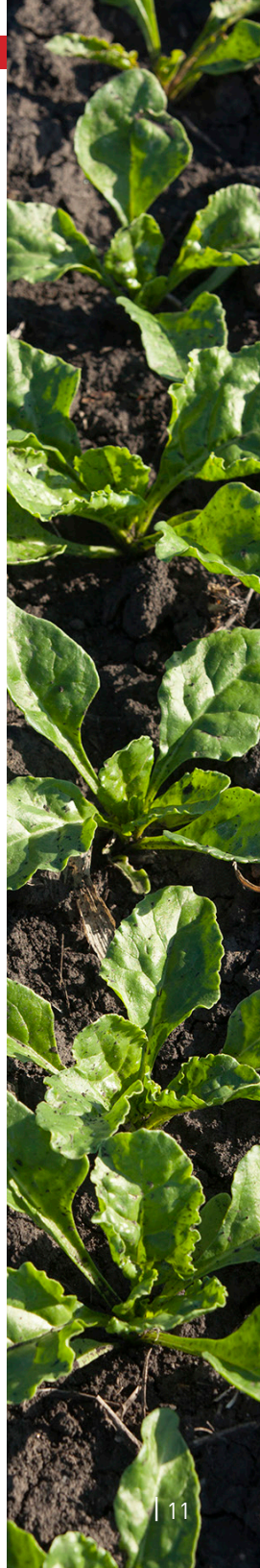
Eminent domain, also called “condemnation,” is the government’s ability to take private property for public use. Under North Dakota law, condemnation proceedings can be used only for projects which have a public use or a public purpose, and private property cannot be taken or damaged for public use without just compensation first having been made to the landowner.

PRELIMINARY PROCEDURES

The process begins when the condemnor (the government agency or private entity that has the power to take the private land) determines that construction of a public project will require the use of private property. To reach this point, the condemnor often conducts surveys and studies to determine exactly which parcels of land are needed for a given project. If the property is damaged during the study period, the landowner is entitled to compensation. If the condemnor determines that a landowner’s property is necessary for the project and the landowner refuses to sell the property identified, the property may be condemned.

Before bringing condemnation proceedings, the condemnor must make a “reasonable and diligent effort” to negotiate with the landowner to purchase the property. To do so, the condemnor must establish an amount which it believes to be “just compensation” for the property and give a copy of a written appraisal of the property, or a written summary showing how the just compensation was determined. The landowner then has the right to request a list of at least ten neighboring landowners to whom offers are being made for the same project. If fewer than ten are affected, then a list of all landowners must be provided. The landowner also has the right to examine and copy any map in the condemnor’s possession showing the property affected by the project, and to demand from the condemnor a list of any other landowners within the county or adjacent counties whose property must be taken for the project.

If the landowner and condemnor cannot reach an agreement, the condemnor may then use its condemnation powers to acquire the property. At this point, the eminent domain procedure looks different, depending upon what entity is acquiring the property and to what use the property will be put.





THE “QUICK TAKE” PROCEDURE

Certain state and local government agencies in North Dakota have the power to use the “quick take” procedure to acquire property for right of way. The quick take procedure allows the government entity to take possession of the property by following negotiation procedures set out in the statute, if required. Should these negotiations fail, or they are not required for that government entity, the property may be acquired upon offering to buy it and depositing the amount of the purchase offer with the clerk of the district court in the county where the property is located. The clerk must notify the landowner that the money has been deposited. If the landowner disputes the taking of the property or the amount offered for it, the landowner must appeal to the district court.

In all other situations, the condemnor is not allowed to take possession of the property until the amount of “just compensation” has been determined through the court system and that amount has been paid to the landowner or deposited with the court. The court process begins when the condemnor serves the landowner with a Summons and Complaint.

USE OR NECESSITY

Landowners may challenge the “use” or “necessity” for taking the property. A judge then must decide the legal question of use or necessity. The court will schedule a separate hearing to determine these questions. If they are not happy with the judge’s decision, the landowner or condemnor may have the ability to appeal to the North Dakota Supreme Court. To determine if there are grounds for an appeal, the interested party should consult an attorney in private practice.

After the use or necessity issue has been resolved by a court, a trial will be set to determine the amount the landowner should be paid for the property – the “just compensation.”



JUST COMPENSATION

Just compensation is payment made by the condemnor that is intended to compensate the landowner for the fair market value of the property taken and any severance or consequential damages. The determination will be made by a jury or, if the landowner waives the right to a jury, by a judge. At the trial, both the landowner and condemnor present their opinions on the amount of just compensation. Both sides are allowed to have witnesses, expert appraisers, exhibits, and other evidence to support their claims.

The amount of just compensation is determined after the judge or jury has listened to the evidence and considered all the documents presented by both sides. If either side is dissatisfied with the amount determined at trial as just compensation, that party may be able to request a new trial, make an appeal to the North Dakota Supreme Court, or both. The dissatisfied party should consult an attorney in private practice to determine if any of these options are applicable. While an appeal is pending, the trial court judge may allow the condemnor to take possession of the property after depositing the amount of just compensation awarded at trial. The amount ultimately decided to be due to the landowner will be paid when the appeals are finished.

DAMAGE AWARD

The landowner has the right to be compensated for the value of the property taken, including the value of any improvements to the property, as well as payment for certain additional damages:

- **Severance Damages** – awarded if the property to be taken is part of a larger parcel of land and the remaining land loses value or is damaged because it is severed from the part taken in the condemnation process.
- **Consequential Damages** – awarded if property not taken by condemnation is damaged by construction of the public project.

Occasionally, the construction of the public project improves or enhances the remaining property not taken. In that case, the value of such improvement is deducted from the amount of damages due to the landowner. These improvements do not reduce the value of the property taken or the amount of just compensation.





"Nobody spends somebody else's money as carefully as he spends his own. Nobody uses somebody else's resources as carefully as he uses his own. So if you want efficiency and effectiveness, if you want knowledge to be properly utilized, you have to do it through the means of private property." - Milton Friedman

ATTORNEY FEES

Most courts order the condemnor to pay the landowner's "reasonable" costs and attorney fees associated with the trial. The court decides what is reasonable, so the landowner may not be fully reimbursed for all actual costs and attorney fees. The court may also require the condemnor to pay the landowner's attorney fees and costs associated with an appeal. However, if the landowner appeals or requests a new trial and does not win, the court may impose the costs of appeal or the new trial on the landowner.

SUMMARY OF LANDOWNER RIGHTS

A landowner has the right to:

- Negotiate with the condemnor before condemnation proceedings begin;
- Receive a copy of the appraisal done by the condemnor or a written statement and summary showing the basis of the condemnor's offer;
- Request and receive a list of neighboring property owners to whom offers have been made, including a map of the affected property and the list of adjacent landowners whose properties are affected by the project;
- Ask a judge to decide whether the property the condemnor wants to take is necessary for the proposed use;
- Have a judge or jury decide the amount of just compensation;
- Appeal a court decision regarding public use, necessity, or just compensation; and to ask for reimbursement of attorney fees and costs.

The foregoing general information is not intended to describe every right a landowner may have or cover every situation. It also does not address the eminent domain process used by the federal government or by a private entity, which gets condemnation power from federal law. Property may be posted electronically using the North Dakota Game and Fish website, physical signage, or both. No visible sign is not an indication that property can be legally accessed.



DRAINAGE AND WATER RIGHTS

Proper drainage is essential for maintaining the productivity and value of farmland and other properties in North Dakota. Effective water management helps prevent flooding, soil erosion, and crop damage while ensuring adequate water supply for agricultural needs. For more information regarding drainage services, please contact someone in an area near you where surface drainage is commonly practiced.

SURFACE DRAINAGE

Under North Dakota law, a permit is required to drain a body of water with a watershed area of 80 acres or more, such as a pond, slough, lake, or sheetwater. A landowner must submit a permit application for surface drainage to the North Dakota Department of Water Resources ("DWR"). The DWR will then determine whether or not the application is "drainage of statewide or interdistrict significance" and Water Resource Districts ("WRD") will either approve or deny the application. Except regarding applications for drainage of statewide or interdistrict significance, the WRD's decision is final.

EMERGENCY SURFACE DRAINAGE

Emergency surface drainage requires landowners to obtain a permit, which is submitted to the DWR. If issued, emergency drainage permits are temporary, six month permits.

DRAINAGE COMPLAINTS

A complaint of unauthorized construction of a drain may be filed with the WRD. The WRD will then determine if a landowner or tenant constructed a drain without first securing a permit as required by North Dakota law or in conflict with the terms or conditions of the drainage permit. A WRD decision on a drainage complaint may be appealed to the DWR within thirty days of receipt of the WRD's decision on the complaint. If the WRD does not act on the complaint within a reasonable time, or 120 days, the original complaint may be filed with the DWR within 150 days of the original submittal date.



*"Ranchers need
clean water
for their stock,
farmers need it
for their crops,
every employer
needs it to stay
in business,
and every
living thing
needs it for
life... The law
needs to be clear
to protect water
quality and the
rights of
landowners."
- Mark Udall*



Best Practices

- Contact the N.D. Department of Environmental Quality and local fire department to learn about specific ordinances and permits needed for the area to be burned and type of burning to be done
- Write a burn plan
- Ensure there is not a local or state burn ban in effect
- Ensure that appropriate fire breaks surround the area being burned in accordance with state law
- Notify the local fire department before commencing a burn
- Stay apprised of local weather conditions, especially wind direction and speeds
- Never leave a fire unattended
- When complete, ensure that the fire is adequately out

OBSTRUCTION TO DRAIN AND WATERCOURSE COMPLAINTS

A complaint of obstruction to a drain or watercourse may be filed with the WRD of jurisdiction. The WRD will determine if a landowner or tenant has intentionally or negligently caused an obstruction to a natural watercourse or drain. A WRD decision on an obstruction to a drain complaint may be appealed to the district court of the county in which the land is located.

OPEN BURNING

While agricultural burning is an effective method for clearing fields, it requires prudent planning from North Dakota landowners.

APPLICABLE RULES AND REGULATIONS

In North Dakota, open burning is considered any burning that takes place in an unenclosed space. This definition includes controlled burning of cropland and rangeland and the burning of refuse. All open burning must comply with the following conditions:

- No public nuisance is or will be created
- No occupied building may be impacted by air contaminants from the burning
- No traffic hazards can be created
- The burning must be attended and supervised at all times

The North Dakota Department of Environmental Quality has the legal authority to enforce the open burning laws. Violations can result in substantial penalties.



North Dakota Prescribed Burning Rules and Regulations
| NDSU Agriculture photo

OIL AND GAS LEASING

EXPLORATION PERMIT

Chapter 38-11.1 of the North Dakota Century Code provides landowners with a remedy for just compensation for injury to their property and interference with the use of their property caused by oil and gas development. Surface owners are entitled to compensation from a mineral developer for (1) lost land value; (2) lost use of and access to their land; and (3) lost value of improvements, if any, caused by the oil and gas drilling operations.

NOTICE REQUIREMENTS

Before entering a landowner’s property for inspection, staking, surveying, measurements, or evaluating possible routes and sites, the mineral developer must provide a landowner with at least seven days’ notice by registered mail or hand delivery.

Except for geophysical exploration activities, the mineral developer must provide a landowner with at least 20 days’ notice to the start of the drilling operations by registered mail or hand delivery, unless notice requirements are waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice may be given at any time prior to the start of drilling operations. This notice must sufficiently disclose the plan of work and operations for you to be able to evaluate the effect of drilling operations on the use of your property.

If a mineral developer fails to give notice as provided above, you may seek relief in the court of proper jurisdiction and you may receive punitive as well as actual damages.

NOTIFICATION OF INJURY

Any person seeking compensation for damage and disruption or loss of production must notify the mineral developer within two years after the injury occurs or would be apparent to a reasonable person.

SURFACE OWNER DAMAGE COMPENSATION

Chapter 38-11.1 of the North Dakota Century Code provides landowners with a remedy for just compensation for injury



Resources

Contact the N.D.
Department of
Land Trusts:

1707 N 9th Street
Bismarck, ND
58501

701.328.2800

dtlrequest@nd.gov

Contact North
Dakota Mineral
Resources:

1016 East Calgary
Avenue
Bismarck, ND
58503

701.328.8020

oilandgasinfo@nd.gov





to their property and interference with the use of their property caused by oil and gas development.

Surface owners are entitled to compensation from a mineral developer for: 1) lost land value; 2) lost use of and access to their land; 3) lost value of improvements, if any, caused by the oil and gas drilling operations.

OPEN FIELDS DOCTRINE

The Fourth Amendment to the United States Constitution guarantees “the rights of people to be secure in their person, houses, papers, and effects against unreasonable searches and seizures . . . and no warrants shall issue, but upon probable cause . . .” While the Fourth Amendment protects people rather than places, modern courts are often asked to wrestle with where, geographically, the protections of the Fourth Amendment extend. The answer is often impacted by whether a “reasonable expectation of privacy” exists in each location. A reasonable expectation of privacy exists inside one’s own home, but does not exist at a busy, public location or event. The scenarios between those opposite ends of the spectrum can be less clear.

CURTILAGE

The United States Supreme Court has held that, just as a person has a reasonable expectation of privacy inside their home, the same expectation of privacy may exist in the areas immediately surrounding the home, often referred to as curtilage. When determining whether a reasonable expectation of privacy exists, courts consider four factors:

1. Proximity of the area in question to the home;
2. Whether the area is enclosed;
3. The nature of the use of the area in question; and
4. Any other steps taken to protect the area from observation by those passing by.

Generally, the more private and closer an area is to a home, the more likely a court will determine a reasonable expectation of privacy exists.

OPEN FIELDS

The same is not true of open fields. Dating back to 1924, the United States Supreme Court has held that there is no reasonable expectation of privacy in an open field. Where curtilage is private, hidden from the view of the public, and close to one's home, open fields extend far from the home and are in open view for every passerby to see. Generally, law enforcement is able to enter and search open fields without a search warrant or probable cause to believe a crime is being committed.*

*For hunting purposes, open fields or shelters may be posted to prevent individuals from hunting and trapping on privately owned property; those postings do not prevent access by law enforcement.

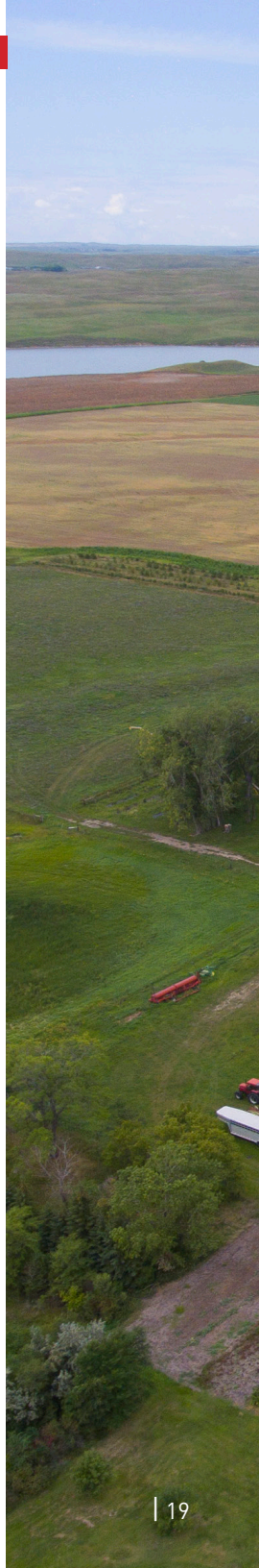
TRESPASSING AND LANDOWNER LIABILITY

A LANDOWNER'S DUTY OF CARE

A landowner is not specifically required under North Dakota law to keep their land safe for recreational purposes, regardless of location and nature of the recreational activity and whether the entry, both unauthorized and authorized, or use by others is for their own recreational purposes or is directly related to the recreational activity of other persons. Additionally, landowners are not required to warn users of a dangerous condition, use, structure, or activity on their property.

A landowner either directly or indirectly inviting or permitting others to use their property for recreational purposes free of charge is not required to:

- Assure that the premises are safe for any and all other purposes;
- Confirm that the recreational users or any other person whose presence on the premises is directly related to the recreational purposes are of legal and/or licensed status (this does not include those who provide goods and services at the request and direction of the landowner); or
- Assume responsibility for injury to a person or damage to any property caused by the users. Persons using the land for recreation should be prepared for all conditions, whether safe or unsafe.





While North Dakota law offers many protections to landowners, there are some limitations. Landowner liability protection does not apply to (1) a person who enters the land to provide goods and services at the landowner's request, or (2) a landowner engaged in a for-profit business venture that directly or indirectly invites members of the public onto the property for commercial purposes or during normal periods of commercial activity in which members of the public are invited.

Additionally, if an injury is suffered by a recreational user, a landowner is liable for the following conditions:

- There has been a willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
- The user has been charged for entry onto the land other than the amount, if any, paid to the landowner by the state, county, or city. A charge does not include vehicle, parking, shelter, or other similar fees required by any public entry.
- The charges collected in the previous calendar year are more than twice the total amount of property taxes imposed on the property or four times the total amount of agricultural property taxes imposed on the property.



Most modern businesses dealing with high dollar investments in equipment and other assets will generally have a good working relationship with accountants, marketing professionals, tax specialists and their bank. Why are farmers and ranchers often reluctant to have that same type of business relationship with an attorney?

BOUNDARY DISPUTES AND PROPERTY RIGHTS

A common concern many landowners share is understanding their rights when they believe someone is encroaching on their property.

TREES AND PROPERTY RIGHTS

Trees located on the property line belong to both property owners; however, trees with trunks that stand wholly upon the landowner's property exclusively belong to the landowner, although the tree's roots grow into the land of another.

Under North Dakota law, a landowner has the right to "self-help" by trimming encroaching tree branches up to the property line. However, if a landowner causes damage to a neighbor's tree by exercising this right, the landowner may be liable for this injury.

Furthermore, encroaching trees and plants are not nuisances merely because they cast shade, drop leaves, flowers, or fruit, or just because they happen to encroach upon adjoining property either above or below the ground. However, encroaching trees and plants may be regarded as a nuisance when they cause actual harm or pose an imminent danger of actual harm to adjoining property. The owner of the tree or plant may be held responsible for harm caused by it and may also be required to cut back the encroaching branches or roots, assuming the encroaching vegetation constitutes a nuisance.

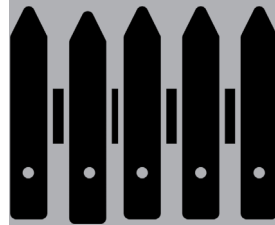
BOUNDARY FENCES

The occupants and the owners of property enclosed with fences are mutually and equally bound to maintain the boundary fences between their own and the next adjoining enclosures, unless one of such owners chooses to let that owner's land lie open. If one of the owners or occupants of the property requires a boundary fence, the owner or occupant requesting the boundary fence is responsible for the entire cost of erecting and maintaining the boundary fence.

*"Freedom
and
property
rights are
inseparable.
You can't
have one
without
the other."*

- George

Washington



The North Dakota Century Code gives your County Commission authority to settle fence and property line disputes.



What action you can take

If a landowner finds someone unlawfully living on their property, the following legal actions may be taken:

- Serve notice to vacate
- File a lawsuit and get a court order for removal
- Call the sheriff for removal



All boundary fences must be kept in good repair throughout the year unless the occupants on both sides mutually agree otherwise.

If a landowner wants to remove a boundary fence, the landowner must give six months' notice to the adjacent landowner.

LANDOWNER REMEDIES FOR NEIGHBOR'S USE OF PROPERTY

Property boundaries are very important when it comes to use of land. Even a small encroachment by a neighbor onto a landowner's property may result in unforeseen consequences, such as non-issuance of insurance. A quiet title lawsuit may occur when a survey will not resolve a boundary dispute.

ADVERSE POSSESSION

North Dakota has laws that allow a person who uses another's land for long enough to gain a legal right to use the property. The time period for adverse possession is twenty years, unless it is a defined tract of land and the adverse possessor has been paying the property tax, in which case the time period is only ten years. To adversely possess property in North Dakota, one must meet the following requirements:

- Continuous possession – meaning the non-owner must physically occupy the property for the statutory time period
- Open and notorious possession – meaning the non-owner must occupy the property without concealing their presence
- Exclusive possession – meaning the non-owner must possess the property exclusively, without sharing possession with the legal owner
- Hostile possession – meaning the non-owner is occupying the property without permission from the legal owner
- Actual possession – meaning the non-owner exerts control over the property through their regular use and occupancy. The non-owner must treat the property as their own

ANIMAL CONTROL

DIFFERENCES IN URBAN AND RURAL AREAS

Animal control in North Dakota is governed by a combination of state laws and local ordinances, with notable differences between urban and rural areas. These differences reflect the varying needs and challenges faced by city and rural communities in managing domestic and wild animals.

Key Points:

• Urban Areas (Cities):

- o Local Ordinances: Cities typically have more stringent animal control ordinances. These regulations cover pet licensing, leash laws, noise complaints (such as barking dogs), and limits on the number of pets per household.
- o Animal Services: Urban areas often have dedicated animal control officers and services, including shelters, to manage stray animals, enforce ordinances, and respond to complaints. These services ensure public safety and reduce nuisances.
- o Public Health and Safety: Cities prioritize issues like rabies vaccination, animal bites, and the control of aggressive animals. Pet owners are usually required to vaccinate and register their pets.

• Rural Areas:

- o State Law and Limited Ordinances: In rural areas, state law primarily governs animal control, with fewer local ordinances. County ordinances, if they exist, may regulate specific concerns, such as livestock at large, but are generally less restrictive.
- o Livestock Management: Rural areas often deal more with issues related to livestock, such as fencing laws and livestock trespassing. There is a focus on protecting agricultural interests.
- o Wildlife and Predators: In rural areas, there is more concern about controlling wildlife and predators that may threaten livestock. The responsibility of managing these issues often falls to landowners, sometimes with support from state agencies.
- o Less Formal Control: There is typically a less formal animal control infrastructure in rural areas, with fewer dedicated officers or services. Residents often address issues more informally or rely on county sheriffs for assistance.

Compare

• Regulation

Intensity: Urban areas have more comprehensive and enforceable animal control regulations compared to rural areas, where laws are more relaxed and focused on agricultural needs.

• Services

Availability: Cities usually provide more resources and services for animal control, while rural areas rely on minimal intervention, focusing on self-regulation by landowners.

• Focus of Control:

Urban regulations focus on pets and public health, while rural areas prioritize livestock management and control of wild predators.

Animal control under North Dakota law varies significantly between urban and rural areas, reflecting the different priorities and challenges of managing animals in these distinct environments.



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