N.C.P.I.-Civil. 805.64B
DUTY OF OWNER TO CHILD TRESPASSER - ARTIFICIAL CONDITION.
GENERAL CIVIL VOLUME
JUNE 2013
N.C. Gen. Stat. § 38B-3(2)

805.64B DUTY OF OWNER TO CHILD TRESPASSER: ARTIFICIAL CONDITION.

> *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 805.65A.*

The (*state number*) issue reads:

"Was (*name person*) a child trespasser [who was injured] [whose death was caused] by an artificial condition[1] on the land of 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, each of the following nine things:[4]

First, that the defendant was the [owner] [person in possession] [lessee] [occupant] [person acting on behalf of a lawful possessor] of land.[5]

> *[NOTE WELL: If the parties have stipulated that the defendant was the owner, person in possession, lessee, occupant or person acting on behalf of a lawful possessor of land pursuant to N.C. Gen. Stat. § 38B-4(2), then the jury should be so instructed here.]*

Second, that (*name person*) was a child trespasser on the land of the defendant.[6]

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[As was previously explained to you in the (*state number*) issue, a trespasser is a person who enters on the property of another without permission and without an invitation, express or implied, of the [owner] [person in possession] [lessee] [occupant] [person acting on behalf of a lawful possessor] of land and has no right to be there.] [7]

A child trespasser is a trespasser who [is less than 14 years of age] [or] [has the level of mental development found in a person less than 14 years of age].[8]

Third, that the defendant maintained or allowed to exist [a] [an] (*identify artificial condition*), and that it was an artificial condition on the land.[9]

Fourth, that the defendant knew or had reason to know that children would be likely to trespass on *his* premises at the location of the (*identify artificial condition*).[10]

Fifth, that the defendant knew or reasonably should have known that the (*identify artificial condition*) involved an unreasonable risk of serious bodily injury or death to such children.[11]

Sixth, that (*name person*) did not [discover the (*identify artificial condition*)] [realize the risk involved in the (*artificial condition*)] [realize the risk in coming within the area made dangerous by the (*artificial condition*)].[12]

Seventh, that the utility to the defendant of maintaining the (*identify artificial condition*) and the burden of eliminating the danger were slight as compared with the risk to (*name person*).[13]

Eighth, that the defendant failed to exercise reasonable care to

eliminate the danger or otherwise to protect (*name person*) from [injury] [death].[14] Reasonable care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect children from [injury] [death].

And Ninth, that (*name person*)'s [injury] [death] resulted from the defendant's conduct.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that:

(1) the defendant was the [owner] [person in possession] [lessee] [occupant] [person acting on behalf of a lawful possessor] of land;

(2) (*name person*) was a child trespasser on the land of the defendant;

(3) the defendant maintained or allowed to exist [a] [an] (*identify artificial condition*), and that it was an artificial condition on the land;

(4) the defendant knew or had reason to know that children would be likely to trespass on *his* premises at the location of the (*identify artificial condition*);

(5) the defendant knew or reasonably should have known that the (*identify artificial condition*) involved an unreasonable risk of serious bodily injury or death to such children;

(6) (*name person*) did not [discover the (*identify artificial condition*)] [realize the risk involved in the (*artificial condition*)] [realize the risk in coming within the area made dangerous by the (*artificial condition*);

(7) the utility to the defendant of maintaining the (*identify artificial condition*) and the burden of eliminating the danger were slight as compared with the risk to (*name person*);

(8) the defendant failed to exercise reasonable care to eliminate the danger or otherwise to protect (*name person*) from [injury] [death]; and

(9) (*name person*)'s [injury] [death] resulted from the defendant's conduct,

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.

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1. In 2011, the General Assembly enacted the Trespasser Responsibility Act, N.C. Gen. Stat. § 38B-1 et seq., which included a subsection addressing the liability for harms to trespassing children caused by "artificial conditions." *See* N.C. Gen. Stat. § 38B-3(2). The statute does not define "artificial condition." The pre-statute common law on attractive nuisance has addressed the issue of "artificial conditions" in the context of child trespassers. *See Leonard v. Lowe's Home Centers*, 131 N.C. App. 304, 307, 506 S.E.2d 291, 293 (1998) (defining "artificial conditions" as those conditions that are not "natural and obvious"). The Pattern Jury Instruction Committee takes no position on whether the pre-statute definition of "artificial condition" applies under the statute.

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 that 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 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.

4. N.C. Gen. Stat. § 38B-3(2) (2011).

5. N.C. Gen. Stat. § 38B-4(2).

6. N.C. Gen. Stat. § 38B-3(2).

7. 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.

8. N.C. Gen. Stat. § 38B-4(1).

9. *See* N.C. Gen. Stat. § 38B-3(2) and *supra* note 1.

10. N.C. Gen. Stat. § 38B-3(2)(a).

11. N.C. Gen. Stat. § 38B-3(2)(b).

12. N.C. Gen. Stat. § 38B-3(2)(c).

13. N.C. Gen. Stat. § 38B-3(2)(d).

14. N.C. Gen. Stat. § 38B-3(2)(e).