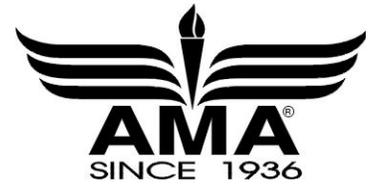


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MODEL FLIERS AND THEIR NEIGHBORS

This article addresses issues concerning overflying the property of other people by AMA members and the possible consequences of such overflying with respect to trespass.

The question of flying rights comes up periodically and it often hinges on the recovery of a downed aircraft on a neighbor's land. Other aspects of rights are related to the airspace over the land that borders our flying fields and the legitimacy of complaints from neighbors when we fly over their property.

In order to give AMA members some more clearly defined guidelines, we requested that our legal counsel prepare a brief on the general matter of trespass. It's important to note in all actual legal cases that a *local* attorney needs to be consulted. This is necessary because local attorneys have knowledge of local laws and precedents. The Academy can only provide general information such as that which follows with the purpose of drawing your attention to matters that can and do effect your hobby/sport of aeromodeling.

The law prohibiting trespass to land extends beyond uninvited entry onto another's land on foot or in a vehicle. Trespass also occurs when there is an uninvited entry into the airspace above the property of another or by burrowing beneath the property of another. This follows the old common law rule that land ownership allows the owner the right to use and enjoy the extent of his real property "up to the heavens and down to perdition." Therefore, the flying of a model aircraft into the airspace owned by another without the landowner's prior permission is a violation of the landowner's right to the quiet use and enjoyment of his property and does constitute a trespass.

There are currently three theories of recovery available to landowners seeking redress for trespass to their land. The applicability of these theories varies from state to state. The first of these theories divides the airspace over one's property into two "zones." The upper zone begins at an altitude which is beyond the potential use of the landowner; high enough that the landowner's expected enjoyment of his real property could not be disturbed by entry of another into it. The lower zone is that portion of airspace that the landowner uses and is within the area where the landowner has a reasonable expectation of quiet enjoyment. Where there is an uninvited entry into this lower zone, an actionable trespass to land has occurred.

The second theory of recovery is the recognition of an unlimited ownership of upward space, extending indefinitely. This absolute ownership may be disturbed only by those considered within the privilege of necessary flight. The

privilege of necessary flight is comparable to that given for navigable streams running through the private property of another. Therefore, full scale airplanes, rockets, and the like may pass over private property with immunity from an action for trespass.

The final theory of recovery parallels the doctrine of nuisance as a means of redress. This theory states that when there is a violation of the airspace over the landowner's property such that his right of quiet enjoyment and use is harmed, then the action of trespass shall lie. The emphasis of this practical test is on the loss to the landowner of his quiet enjoyment, rather than the actual invasion of a particular space. Therefore, this theory seeks to compensate for either diminished value to the landowner or the actual damage created by the invasion across the real property.

None of these theories makes any distinction between the intentional versus the negligent entry into the landowner's airspace. The tort of trespass does not need to be intentional to be actionable. Any violation of the rights arising out of the ownership of real property resulting in an entry onto, over, or under the land of another without invitation is a trespass and is therefore actionable.

The various states apply various theories of recovery to allow their residents to recover for trespass. Yet, every state would consider the flight of a model aircraft at ordinary altitudes over the land of another, without invitation, a trespass. The second theory contained as a flight privilege is intended to aid passenger craft and other such aircraft and could be interpreted as not allowing any overflight by hobby models. Therefore, you should continue to urge the AMA members to avoid any flight over property where no permission has been granted.

If flying into the airspace controlled by another is a trespass, then it follows that the uninvited landing or crashing of planes onto the surface of the land without invitation is also a trespass. In this connection, you have asked, "What happens to the plane after the landing has occurred?" According to 75 Am. Jur. 2d *Trespass* Section 44, the owner of the plane may not enter to recapture his plane if the plane was deposited on the land of another due to the fault or negligence of another without permission then he is committing a second act of trespass. Therefore, the owner of the plane must gain the permission of the landowner to enter and secure his plane.

On the other hand, the landowner has a duty to the owner of the plane, as well. The landowner cannot keep the landed plane. That would amount to a conversion of the flier's property and the landowner may be compelled to pay the cost of the plane. The landowner may not intentionally damage the plane, as this would be a trespass to the chattel of the flier. The landowner may ask to have it removed by the flier. The landowner may move the craft himself if its location is causing some harm to his enjoyment of his property, or is creating some other risk of harm. If the owner of the plane does not remove it upon request, the landowner

may have the plane removed from the property such as one would have an automobile impounded. In any event, the landowner may not deprive the AMA member of his right to the airplane nor may he intentionally or recklessly cause damage to the craft. If the landowner breaches this duty to the owner of the plane, he exposes himself to liability for conversion, trespass to chattel, replevin, and other forms of recovery designed to enable the AMA member to recover the plane or its value.

Remember that any agreement involving or touching upon real estate must be in writing or the agreement is unenforceable. So if you obtain a landowner's permission to use his property, have the landowner sign a paper that grants you permission. It doesn't have to be an impressive document. It can be one sentence on the back of an envelope - just get his signature on it.

Finally, most states have criminal trespassing laws which may apply to a particular situation, depending on sign posting requirements and exceptions to posting laws.

We hope that you will find the above information useful to you and your club in understanding the rights of various people over flying activities. Please retain this document for future reference. If you have any questions, please contact AMA headquarters in Muncie, IN at 765.287.1256.