

# THE FOWLER LAW FIRM PC



## ***HELP! POKÉMON IS TRESPASSING ON MY LAND***

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*Dear Readers: Well... It's summertime. Let's have a little fun! Each week this summer, The Fowler Law Firm will send you an Electronic Alert like this one, designed to do two equally important things: (1) Inform you about a challenge many others like you regularly ask that costs them money or forfeits an opportunity; and (2) Showcase the skills and resources of The Fowler Law Firm PC in our award-winning Practice Sections.*

*Reply to this Electronic Alert to ask a question or make a comment in strictest confidence. Have a great Summer of 2016!*

### **Multiple-Choice Quiz**

You and your family reside in a beautiful home on a one acre lot with wooded areas, rocks, snakes, foxes and tarantulas next to a municipal park used by hikers, bikers, dog lovers and everyone who enjoys the great outdoors. Your lot is not fenced. Increasingly over the past month, you have witnessed uninvited citizens on your land in

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the early evening, always with their cell phones glowing in the twilight. Last night at dinner your eleven year old daughter gleefully exclaimed that she found Pokémon® in several places on your land and even in your home. Meanwhile you have learned to your great dismay:

- A. Three nights ago, several citizens were arrested while on your land for making public disturbance. Your neighbors called law enforcement about to complain.
- B. Yesterday, EMS rescued a hiker who twisted her ankle when she strayed onto your land. She had a cell phone in her hand and was incoherently moaning about a rare and exotic *Celibi* getting away.
- C. The municipal park authority is seeking to raise funds to make up for the increased cost of maintaining its facilities because of unprecedented use. The Director of Parks and Recreation has announced a *Pokémon Go*™ Festival to convene in the park over Labor Day.

What should you do?

1. Accept the fact that the world is changing. Call your stock broker and buy as many shares of *Nintendo* (NTDOY) as you can afford. You will probably need them to pay off claims.  
See: <http://www.marketwatch.com/investing/stock/ntdoy>
2. Take a deep breath and relax. Texas homestead laws are generous. Even in a city, one acre and the structures in which you reside are exempt from judgment.  
See Texas Property Code Section 41.001 Property Exempt from Creditors' Claims. See: <http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.41.htm>
3. Access your city ordinances and state laws on public events and nuisance; just because someone in Parks and Recreation decides to announce an event doesn't make it legal.  
See: <http://www.austintexas.gov/department/nuisance-abatement>
4. File immediately to run for City Council. It's never too late to become a committed citizen and work towards firing the Director of Parks and Recreation.
5. Call your homeowner's property casualty insurance policy issuer immediately and find out what is covered and what your policy requires you to do to further protect yourself in the event of an accident. Find out if you should increase your umbrella coverage and what it would cover.

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**The Correct Answer Is... Happy News!** In Texas, most trespassers on your land even if injured by conditions of your land do not create liability for you. You are not an insurer of those who, while trespassing on your land, injure themselves or others due to their negligence or reckless behaviors. If your land is designated as your homestead, even in a city in Texas, up to one acre and the residential structures if in use as homestead are exempt from creditors' seizures.

While creating or hosting an attractive nuisance on your land does change your level of liability, with this set of facts, you did not invite *Pokémon* onto your land. Indeed, no one seems to really understand why and how *Pokémon* chooses to come and go from one venue to the next! If indeed *Pokémon* is an attractive nuisance, he too is a trespasser and your level of liability does not change.

*Pokémon* is probably judgment proof! Have you seen the liability and release form required of anyone who downloads a *Pokémon Go* app? And the app even warns users against playing while driving, to be aware of their surroundings, and to not trespass while playing – so don't think that Nintendo is going to swoop in and provide you any help!

See: <https://www.nianticlabs.com/terms/pokemongo/en>

With that said, anyone can sue you any time. Many *Pokémon Go* players are not persons of means. *Many are children!* We say this to make the point that a *Pokémon Go* player who is injured on your land who elects to sue you, may not have any resources to reimburse you even if a court rules that the suit was frivolous and awards attorneys fees in your favor.

Texas Tort laws are much more protective of land owners than in many other states. As a direct result, general liability insurance premium costs are surprisingly low for most landowners.

See: <http://www.insurancejournal.com/news/southcentral/2013/09/03/303718.htm>  
<http://www.forbes.com/forbes/welcome/>

If your homeowner's property casualty insurance agent is not already your best friend, spend today making a deserving insurance agent your new BFF. Learning about insurance umbrellas can come in handy for a rainy day!

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We thank the attorneys in our firm who conducted research for this article using their cell phones in Downtown Austin where Pokémon appear to inhabit in great numbers both chambers of the Texas Capitol, the Governor's Mansion, Austin City Hall and the Texas Supreme Court. And yes, their actions are covered in the scope and course of their employment by our very excellent Workers Compensation Insurance Plan.

In your every summertime adventure, we wish you the very best!

*The Fowler Law Firm Education Law Section is nationally ranked as a US News and World Reports Best Law Firm in the United States - Education Law- Tier 1 Designee, as well as Tier 1 in Immigration Law. The firm also recently received the 2016 award for 10 Best Law Firms in Client Satisfaction from the American Institute of Family Law Attorneys. For more information about our firm and our community outreach please contact us at [www.thefowlerlawfirm.com](http://www.thefowlerlawfirm.com), or at (512) 441-1411.*

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