

Protect Yourself from Harm's Way

With landowner confrontations on the rise, a game plan can help ensure everyone's safety



BY BETH MINEAR, ESQ.

In the right of way industry, we serve on the front lines as the face of the various companies for which we work. Especially in early service to a new client, it's likely that agents will not have been fully briefed by the client on company history in a particular locale, and more importantly, about known issues with particular landowners.

Every time an agent makes contact with a landowner, they risk the potential for an adverse interaction, either from past history or regarding opposition to a pending project. Although not the norm, incidents of confrontation and hostility are on the rise, fed largely by the media and anti-everything activists who can distort and mislead the public to serve their own purposes. Effectively dealing with these situations is crucial for any organization.

Do Some Digging

For land agents, doing research, being prepared and having a plan to follow in the event of a hostile situation will go a long way toward ensuring that everyone goes home safely. Right of way agents are among the best professionals at information gathering. They have to be, as land rights, ownership, project details and industry data are the tools of the craft. When it comes to working for clients, whether embedded with a company agent or on maintenance or capital projects, the best information you can get about a history of hostile landowners is from the company itself.

When starting a project, be proactive by asking the question, "Can you please tell me of any history with anyone on this route or within this county that I should know about?" Without much prompting, a client's internal land agents should be able to convey useful information about known landowner issues. Even basic things like knowing that an agent should call before making a visit so the landowner can kennel a dog or fence a bull will save a lot of trouble

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and prevent potential injury. Many companies also keep lists of landowners for whom security will be required before making contact or against whom an injunction has been ordered by a jurisdictional body with authority.

For all potentially hostile situations, make sure you have copies of the client company's vested rights for a property before setting out. Read through and understand what the client has (and doesn't have), and take the time to clarify the client's understanding about any interpretation of the rights that are unfamiliar. If there is a court order, take the time to read through that too, and have a copy with you when you visit the landowner. This is not intended for the landowner, but in the event that the law enforcement shows up. Also, each state or province and some industries have different requirements regarding landowner rights. A company and agent should familiarize themselves with the requirements in their area.

Establish Protocols

When approaching a landowner who has a history of adverse dealings with your client, use the buddy system. Even though you may be armed with research and documentation of the rights and responsibilities, it is wise to take another professional with you to the property. This will not only give you an added level of safety, it will also serve as an extra set of eyes for documentation. They don't need to do any talking, as it is their presence that counts.

Implement whatever training protocols your client or company has put in place for your position, whether it is call every landowner or send a letter

before you visit. Take care to treat adverse landowners in the same respectful, professional manner that you treat all landowners. If there is a special protocol for an individual as directed by the client, put that into motion as well.

Even with the protocols, land agents should use their “grandmother manners” in all landowner interactions. No gum, cigarettes or tobacco while on the landowner's property. Take your sunglasses off and look the property owner in the eyes when you speak. No profanity, slang or industry jargon—speak plainly about why you are there and what you will be doing. For safety reasons, it's a good idea to stay out of landowner's houses, but that sometimes can't be avoided. If entering a home, take care to wipe feet and, for men, take off your hat if you are wearing one. Many irate calls have been placed to companies complaining about a perceived showing of bad manners and disrespect.

Formalize a Game Plan

When visiting a landowner who has an injunction against impeding work on a project or property, or who has been threatening in the past, make sure that local law enforcement has a copy of a court order or the land rights on that parcel before you go. Even without a court order, having a copy of the land rights can protect you against a landowner should they call law enforcement with a claim that you are trespassing. Most won't respond if they have seen the land rights.

As we have seen in the news, even with all the documentation in hand, and even if there is no previous history of hostility with a landowner, issues can escalate at any time. If this is a particularly high-profile project that has been maligned in the news or has experienced some real issues, or if new landowners will be on the route, the potential for adversity is there. The best practice is to have a game plan before an incident occurs. If your employer or client doesn't have one in place, implementing one

beforehand is advisable. Here are some suggestions as to what to include in your plan:

Remove Yourself > No issue is worth getting hurt over. If a landowner has a weapon when you arrive, don't get out of the vehicle. Simply turn around and leave. If a landowner is threatening you physically or making threats to "go get my gun" or "I'll set the dog loose on you," do the same. Remove yourself from the situation, and if coworkers are elsewhere on the property, notify them as well. Leave the site as safely as possible and just get out of there.

Contact Law Enforcement > Make a formal report. Although some clients are reluctant to memorialize issues with law enforcement for fear of making a landowner even angrier, encourage them to do so. That landowner is already angry, and protection of personnel and assets should be paramount. Document the incident clearly and without embellishment or drama. Note who was also present (remember the buddy system) and what specifically transpired. Leave a copy of the land rights if the officer will let you.

Call the Client > Let them know the specifics on the phone and follow up with a formal contact note. If there is a police report issue number, make sure you have that, as well as the name and phone number of the officer who took the report. Get a copy of the report as soon as it's available. The client will likely get their public relations people involved to be able to respond promptly to any media inquiries. The legal department might also need to get involved to determine if an injunction or other court action is necessary.

Clients may want you to call them first, before you make that report to law enforcement, but it is important for companies to recognize that formal documentation helps prevent future problems. It may help ensure that law enforcement will accompany personnel to that site in the future. Many won't without a court order to enforce, but some will while an active investigation is ongoing. And documentation helps the client's legal team in the event that an injunction or other judicial intervention is necessary.

Record the Details

Once an agent is away from the situation and the recommended steps have been followed, they should immediately document all the details. Drafting the contact

notes for that landowner should be done that same day, when the details are fresh and accuracy can be assured. The contact notes should be precise, following the order of what occurred and detailing the facts of the incident as clearly as on the report to law enforcement. If possible, attach a copy of the incident report to the contact notes and simply fill in what the client requires, such as station points or mile markers for assets, employee numbers of the team members present, and internal personnel who were part of the debrief. Be aware of any inconsistencies between the contact notes and the report to law enforcement. Both can be amended, but they need to mirror each other as closely as possible in the event of court action.

Conclusion

Although hostile situations and confrontations are not the norm, the incidents seem to be increasing. Project opponents know they can whip the public into a frenzy over seemingly benign issues, such as replacing aging infrastructure using the existing rights. The best way to prevent these opponents from gaining traction is to be fully prepared. For land agents, doing research, being prepared for a potential confrontation and having a solid plan to follow will go a long way toward ensuring that everyone goes home safely. ⚡



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