

13.3 TRESPASS—IN STRUCTURE OR CONVEYANCE

§ 810.08, Fla. Stat.

To prove the crime of Trespass in a [Structure] [Conveyance], the State must prove the following three elements beyond a reasonable doubt:

Give a. for trespass and/or b. for trespass after warning to depart.

- a.
 1. (Defendant) **willfully entered or remained in a [structure] [conveyance].**
 2. **The [structure] [conveyance] was in the lawful possession of (person alleged).**
 3. (Defendant's) **entering or remaining in the [structure] [conveyance] was without authorization, license, or invitation by (person alleged) or any other person authorized to give that permission.**
- b.
 1. (Defendant) **had been authorized, licensed, or invited to enter or remain in a [structure] [conveyance].**
 2. **[The owner] [The lessee] [A person authorized by the owner or lessee] of the premises warned (defendant) to depart.**
 3. (Defendant) **refused to depart.**

Authority to enter or remain in a [structure] [conveyance] need not be given in express words. It may be implied from the circumstances. It is lawful to enter or remain in a [structure] [conveyance] of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner or occupant.

Definitions. Give as applicable.

§ 810.08(3) Fla. Stat.

"Person authorized" means an owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in case of a threat to public safety or welfare.

"Willfully" means intentionally, knowingly, and purposely.

§ 810.011(1), Fla. Stat. and *State v. Hamilton*, 660 So. 2d 1038 (Fla. 1995).

"Structure" means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure.

§ 810.011(3), Fla. Stat.

"Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car; and to enter a conveyance includes taking apart any portion of the conveyance.

While armed.

If you find the defendant guilty of trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that the defendant was armed or armed [himself] [herself] with a firearm or other dangerous weapon during the trespass.

Human being in structure or conveyance.

If you find the defendant guilty of [attempted] trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that there was a human being in the [structure] [conveyance] at the time of the [attempted] trespass.

§ 790.001(6), Fla. Stat. Give if applicable.

A "firearm" is any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.] See § 790.001(1) Fla. Stat. for the definition of "antique firearm" and § 790.001(4) Fla. Stat. for the definition of "destructive device."

A "dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

Lesser Included Offenses

TRESPASS IN STRUCTURE OR CONVEYANCE — 810.08			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt (except refuse to depart)	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985] and 2012.