

**13.4 TRESPASS—ON PROPERTY OTHER THAN A
STRUCTURE OR CONVEYANCE**

§ 810.09(1)(a)1 and 2, Fla. Stat.

To prove the crime of Trespass on Property other than a Structure or Conveyance, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **willfully entered upon or remained in property other than a structure or conveyance.**
2. **The property was [owned by] [in the lawful possession of] (person alleged).**
3. *Give one of the following paragraphs, as applicable.*

Give if §810.09(1)(a)1 is charged.

Notice not to enter upon or remain in that property had been given by [[actual communication to the defendant] [[posting] [fencing] [cultivation] of the property in the manner defined in this instruction]].

Give if §810.09(1)(a)2 is charged.

The property was the unenclosed curtilage of a dwelling and (defendant) entered or remained with the intent to commit a crime thereon other than trespass.

4. (Defendant's) **entering upon or remaining in the property was without authorization, license, or invitation from (person alleged) or any other person authorized to give that permission.**

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

Definitions.

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

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

§ 810.011(3) Fla. Stat.

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

§ 810.09(3) Fla. Stat.

“Person authorized” means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

§ 810.09(1)(b) Fla. Stat.

“Unenclosed curtilage of a dwelling” means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

§ 810.011(2) Fla. Stat.

“Dwelling” means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night.

"Willfully" means intentionally, knowingly, and purposely.

§ 810.011(5)(a)1. and (b), Fla. Stat. Give if applicable.

Notice not to enter upon property may be given by posting signs not more than 500 feet apart along and at each corner of the property's boundaries. The signs must prominently state, in letters not less than two inches high, the words "No Trespassing." The signs also must state, with smaller letters being acceptable, the name of the owner or lessee or occupant of the land. The signs must be placed so as to be clearly noticeable from outside the boundary lines and corners of the property. [If the property is less than five acres in area, and a dwelling house is located on it, it should be treated as posted land even though no signs have been erected.]

§ 810.011(6), Fla. Stat. Give if applicable.

Notice not to enter property may be given by cultivation of the property. "Cultivated land" is land that has been cleared of its natural vegetation, and at the time of the trespass was planted with trees, a crop, an orchard or a grove, or was a pasture. [Fallow land, left that way as part of a crop rotation, is also "cultivated land."]

§ 810.011(7), Fla. Stat. Give if applicable.

Notice not to enter property may be given by fencing the property. "Fenced land" is land that has been enclosed by a fence of substantial construction. The fence may be made from rails, logs, posts and railings, iron, steel, barbed wire or other wire or material. The fence must stand at least three feet high. [If a part of the boundary of a piece of property is formed by water, that part should be treated as legally fenced land.]

Give if applicable.

When every part of property is either posted or cultivated or fenced, the entire property is considered as enclosed and posted land.

Enhanced penalty. Give if applicable.

If you find the defendant guilty of trespass on property other than a structure or conveyance, you must then determine whether the State proved beyond a reasonable doubt that the defendant was armed with a firearm or other dangerous weapon during the 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 ON PROPERTY OTHER THAN STRUCTURE OR CONVEYANCE — 810.09(1)(a)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1985 and 2012.