

13.6 TRESPASS ON DESIGNATED PROPERTY

§ 810.09(2)(d), (e), (f), (g), or (i), Fla. Stat.

To prove the crime of Trespass on [a Construction Site [Less than or Equal to] [Greater than] One Acre in Area] [Commercial Horticulture Property] [an Agricultural Site for Testing or Research] [a Certified Domestic Violence Center] [an Agricultural Chemical Manufacturing Facility], the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **willfully entered upon property other than a structure or conveyance.**
2. **The property was [owned by] [in the lawful possession of] (person alleged).**
3. **The property was legally posted.**
4. **The property was [a construction site] [commercial horticulture property] [an agricultural site for testing or research] [a domestic violence center certified under s. 39.905] [an agricultural chemical manufacturing facility].**
5. Defendant **entered the property without authorization, license, or invitation from (person alleged) or any other person authorized to give that permission.**

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

“Willfully” means intentionally, knowingly, and purposely.

§ 810.011(1), Fla. Stat.; *State v. Hamilton*, 660 So. 2d 1038 (Fla. 1995); and *DuBose v. State*, 210 So. 3d 641 (Fla. 2017).

“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. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 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.

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

Give as applicable.

§ 810.011(11), Fla. Stat.

“Commercial horticulture property” means any property that is cleared of its natural vegetation and is planted in commercially cultivated horticulture products that are planted, grown, or harvested. The term also includes property that is used for the commercial sale, use, or distribution of horticulture products.

§ 810.011(12), Fla. Stat.

“Agricultural chemicals manufacturing facility” means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

§ 810.011(13), Fla. Stat.

“Construction site” means any property upon which there is construction that is subject to building permit posting requirements.

Give the appropriate designation as alleged in the charging document:

Construction Site less than or equal to 1 acre in area. § 810.09(2)(d)2., Fla. Stat.

“Legally posted” means:

1. The property was less than or equal to one acre in area.
2. The property was identified as a construction site with a sign prominently placed on the property where the construction permits were located.
3. The letters on the sign were not less than two inches in height and the sign read in substantially the following manner: **THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.**

Construction Site greater than 1 acre in area. § 810.09(2)(d)1., Fla. Stat.; § 810.011(5)(a), Fla. Stat.; Borrico v. State, 276 So. 3d 458 (Fla. 5th DCA 2019).

“Legally posted” means:

1. The property was greater than one acre in area;
2. The property was identified as a construction site with signs that read in substantially the following manner: **THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.** The lettering for this part of the signs must be no less than 2 inches in height;
3. The signs were placed not more than 500 feet apart;
4. The signs were located at each corner of the boundaries of the property;
5. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs; and,

6. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.

Commercial Horticulture Property § 810.09(2)(e), Fla. Stat. § 810.011(5)(a), Fla. Stat.; Couch v. State, 326 So. 3d 750 (Fla. 3d DCA 2021).

“Legally posted” means:

1. The property was identified as a commercial horticulture property with signs that read in substantially the following manner: **THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURAL PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.** The lettering for this part of the signs must be no less than 2 inches in height.
2. The signs were placed not more than 500 feet apart.
3. The signs were located at each corner of the boundaries of the property.
4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.
5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.

Agricultural Site for Testing § 810.09(2)(f), Fla. Stat. § 810.011(5)(a), Fla. Stat.

“Legally posted” means:

1. The property was identified as an agricultural site for testing with signs that read in substantially the following manner: **THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.** The lettering for this part of the signs must be no less than 2 inches in height.
2. The signs were placed not more than 500 feet apart.
3. The signs were located at each corner of the boundaries of the property.
4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.
5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.

Certified Domestic Violence Center § 810.09(2)(g), Fla. Stat. § 810.011(5)(a), Fla. Stat.

“Legally posted” means:

1. Signs were located on the property that read in substantially the following manner: **THIS AREA IS A DESIGNATED RESTRICTED SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.** The lettering for this

part of the signs must be no less than 2 inches in height.

2. The signs were placed not more than 500 feet apart.
3. The signs were located at each corner of the boundaries of the property.
4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.
5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.

Agricultural Chemical Manufacturing Facility § 810.09(2)(i), Fla. Stat. § 810.011(5)(a), Fla. Stat.

“Legally posted” means:

1. The property was identified as an agricultural chemical manufacturing facility with signs that read in substantially the following manner: **THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURE FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.** The lettering for this part of the signs must be no less than 2 inches in height.
2. The signs were placed not more than 500 feet apart.
3. The signs were located at each corner of the boundaries of the property.
4. The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.
5. The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.

Lesser Included Offenses

TRESPASS ON DESIGNATED PROPERTY — 810.09(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Trespass on Property Other than a Structure or Conveyance	810.09	13.4
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 7, 2022.

