

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).**

Give if § 810.09(1)(a)1., Fla. Stat. is charged.

3. **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, Fla. Stat. 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, lawful occupant, or any other person authorized to give that permission.

Give only if applicable. While armed.

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, Fla. Stat.

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, Fla. Stat. for the definitions of antique firearm and destructive device.

A “dangerous weapon” is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

State v. Rodriguez, 402 So. 2d 86 (Fla. 3d DCA 1981).

For an object that was designed and constructed to cause death or great bodily harm if used in its ordinary and usual manner, it is not necessary for the State to prove that the defendant was willing to use the object in furtherance of the trespass for an object to constitute a “dangerous weapon.”

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

“Great bodily harm” means harm that is more than slight, trivial, minor, or moderate.

Give only if applicable. § 810.09(2)(k), Fla. Stat.

If you find the defendant guilty of Trespass on Property Other than a Structure or Conveyance, you must also determine whether the State proved the following three elements beyond a reasonable doubt:

- 1. The property trespassed upon was an area being maintained or secured by federal, state, or local law enforcement officers.**
- 2. The property was legally posted.**
- 3. The signs contained substantially the following wording: THIS AREA IS A DESIGNATED RESTRICTED SITE SECURED BY LAW ENFORCEMENT, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.**

§ 810.011(5), Fla. Stat. There are other ways for property to be legally posted. If those other ways apply, a special instruction, based on § 810.011(5), Fla. Stat., will be necessary.

“Legally posted” means signs placed not more than 500 feet apart along and at each corner of the boundaries of the land. The signs must prominently display the wording in #3 above, in letters of not less than 2 inches in height. The signs must be placed along the boundary line of the posted land in a manner and in such position as to be clearly noticeable from outside the boundary line.

§ 810.011, 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, 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, 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, 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, Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

“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, and the enclosed space of ground and outbuildings immediately surrounding that dwelling. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

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

“Willfully” means intentionally, knowingly, and purposely.

§ 810.011, 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 enclosed and 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, 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, 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.

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

Comments

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an “object.”

As of August 2025, there was no caselaw defining “law enforcement officers” for purposes of § 810.09(2)(k), Fla. Stat.

This instruction was adopted in 1981 and amended in 1985, 2012 [87 So. 3d 679], 2018 [257 So. 3d 925], on May 22, 2020, and on September 5, 2025.