Research regarding squatters for
City Commission agenda of February 5, 2013

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Item number: 1

Dictionary definition of squatter

squat·ter [skwot-er]
noun
1. a person or thing that squats.
2. a person who settles on land or occupies property without title, right, or payment of rent.
3. a person who settles on land under government regulation, in order to acquire title.

Item number: 2

ARTICLE VI. - ABANDONED REAL PROPERTY [27]

Sec. 34-161. - Purpose and intent.

It is the purpose and intent of the city to establish a process to address the deterioration and blight of city neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the city, and to identify, regulate, limit and reduce the number of abandoned properties located within the city. It is the city's further intent to establish a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned and foreclosed properties.

(Ord. No. 2011-07, § 2(34-61), 6-7-2011)

Sec. 34-162. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandoned real property means any real property located in the city, whether vacant or occupied, that is in default on a mortgage, has had a lis pendens filed against it by the lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the lender, is subject to an application for a tax deed or pending tax assessors lien sale, or has been transferred to the lender under a deed in lieu of foreclosure. The designation of a property as "abandoned" shall remain in place until such time as the property is sold or transferred to a new owner, the foreclosure action has been dismissed, and any default on the mortgage has been cured.

Accessible property/structure means a property that is accessible through a comprised/breached gate, fence, wall, etc. or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Applicable codes means to include, but not be limited to, the city's zoning code, the city's Code of Ordinances ("City Code"), and the Florida Building Code.

Blighted property means:

(1) Properties that have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or

(2) Properties whose maintenance is not in conformance with the maintenance of other neighboring properties causing a decrease in value of the neighboring properties; or

(3) Properties cited for a public nuisance pursuant to the City Code; or

(4) Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lacks maintenance as required by the city and zoning codes.

Enforcement officer means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by the city to enforce the applicable code(s).

Owner means any person, legal entity or other party having any ownership interest whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

Vacant means any building or structure that is not legally occupied.

(Ord. No. 2011-07, § 2(34-62), 6-7-2011)

Sec. 34-163. - Applicability.

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the city above and beyond any other state, county or local provisions for same.

(Ord. No. 2011-07, § 2(34-63), 6-7-2011)

Sec. 34-164. - Establishment of a registry.

Pursuant to the provisions of section 34-65, the city or designee shall establish a registry cataloging each abandoned property within the city, containing the information required by this article.

(Ord. No. 2011-07, § 2(34-64), 6-7-2011)

ARTICLE VI. - ABANDONED REAL PROPERTY

Sec. 34-165. - Registration of abandoned real property.

(a) Any mortgagee who holds a mortgage on real property located within the City of Coral Gables shall perform an inspection of the property, upon default by the mortgagor. The mortgagee shall, within ten days of the inspection, register the property with the division of code enforcement, or designee, on forms provided by the city, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

(b) If the property is occupied but remains in default, it shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten days of that inspection, update the property registration to a vacancy status on forms provided by the city.

(c) Registration pursuant to this section shall contain the name of the mortgagee and the server, the direct mailing address of the mortgagee and the server, a direct contact name and telephone number for both parties, facsimile number and e-mail address for both parties, the folio or tax number, and the name and 24-hour contact phone number of the property management company responsible for the security and maintenance of the property.

(d) A non-refundable annual registration fee in the amount of $200.00 per property, shall accompany the registration form(s).

(e) All registration fees must be paid directly from the mortgagee, servicer, trustee, or owner. Third party registration fees are not allowed without the consent of the city and/or its authorized designee.

(f) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(g) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they remain vacant or in default.

(h) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten days of the change.

(i) Failure of the mortgagee and/or owner to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement.

(j) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the city may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

(Ord. No. 2011-07, § 2(34-65), 6-7-2011)

Sec. 34-166. - Maintenance requirements.

(a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

(b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

(c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.

(d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.

(e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.

(f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).

(g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or notice of violation/notice of hearing in accordance with chapter 101 of the City of Coral Gables Code of Ordinances. Pursuant to a finding and determination by the city's code enforcement board, hearing officer/special magistrate or a court of competent jurisdiction, the city may take the necessary action to ensure compliance with this section.

(h) In addition to the above, the property is required to be maintained in accordance with the applicable code(s).

(Ord. No. 2011-07, § 2(34-66), 6-7-2011)

Sec. 34-167. - Security requirements.

(a) Properties subject to these sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing of the window.

(c) If a mortgage on a property is in default, and the property has become vacant or abandoned, a property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

(Ord. No. 2011-07, § 2(34-67), 6-7-2011)

Sec. 34-168. - Public nuisance.

All abandoned real property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the city.

(Ord. No. 2011-07, § 2(34-68), 6-7-2011)

Sec. 34-169. - Penalties; schedule of civil penalties.

Any person who shall violate the provisions of this article may be cited and fined as provided in chapter 101 of the City of Coral Gables Code of Ordinances and F.S. ch. 162.

The following table shows violations of these sections, as may be amended from time to time, which may be enforced pursuant to the provisions of this regulation; and the dollar amount of civil penalty for the violation of these sections as it may be amended. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the City Code sections, except to the extent that different types of violations of the Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of the section may be enforced by the mechanism provided in this section, regardless of whether all activities prescribed or required are described in the "Description of Violation" column. To determine whether a particular activity is prescribed or required by this Code, the relevant City Code section(s) shall be examined.

Description of Violation	*Civil Penalty*
Failure to register abandoned real property on annual basis and/or any violation of the sections stated within.	$500.00

(Ord. No. 2011-07, § 2(34-69), 6-7-2011)

Sec. 34-170. - Inspections for violations.

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property. Upon sale or transfer of title to the property, the owner shall be responsible for all violations of the applicable code(s) and the owner shall be responsible for meeting with the city's code enforcement division within 45 days for a final courtesy inspection report.

(Ord. No. 2011-07, § 2(34-70), 6-7-2011)

Sec. 34-171. - Additional authority.

(a) If the enforcement officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health safety and welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the city's code enforcement board or code enforcement special magistrate as soon as possible to address the conditions of the property.

(b) The code enforcement board or hearing officer/special magistrate shall have the authority to require the mortgagee and/or owner of record of any property affected by this section, to implement

additional maintenance and/or security measure including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.

(c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement board or special magistrate may direct the city to abate the violations and charge the mortgagee with the cost of the abatement.

(d) If the mortgagee does not reimburse the city for the cost of temporarily securing the property, or of any abatement directed by the code enforcement board or special magistrate, within 30 days of the city sending the mortgagee the invoice, then the city may lien the property with such cost, along with an administrative fee of $500.00 to recover the administrative personnel services.

(Ord. No. 2011-07, § 2(34-71), 6-7-2011)

Sec. 34-172. - Opposing, obstructing enforcement officer; penalty.

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

(Ord. No. 2011-07, § 2(34-72), 6-7-2011)

Sec. 34-173. - Immunity of enforcement officer.

Any enforcement officer or any person authorized by the city to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

(Ord. No. 2011-07, § 2(34-73), 6-7-2011)

FOOTNOTE(S):

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[27] **Editor's note**— Ord. No. 2011-07, § 2, adopted June 7, 2011, supplied provisions to be added to this Code as §§ 34-61—34-73. In order to maintain the style of this Code, at the discretion of the editor, these provisions have been redesignated as §§ 34-161—34-173. (Back)

Item number: 3

Sec. 38-1. - Adoption of state misdemeanors.

It shall be unlawful for any person to commit, within the limits of the city, any act which is or shall be recognized by the laws of the state as a misdemeanor. The commission of such acts is hereby forbidden.

(Code 1958, § 20-22; Code 1991, § 15-1)

Editor's note—

Adoption of state law relating to misdemeanors by city upheld, see *McFarland* v. *Roberts,* 74 So.2d 88 (Fla. 1954); also *Orr* v. *Quigg,* 135 Fla. 653, 185 So. 726 and *Wright* v. *Worth,* 83 Fla. 204, 91 So. 87; adoption of state law misdemeanors by reference includes laws both in existence at the time and those latter adopted by the state legislature, see *State* v. *Smith,* 189 So.2d 846 (Fla. 4th D.C.A. 1966). Follows rule in *Hecht* v. *Shaw,* 112 Fla. 762, 151 So. 333 (1933). " . . . when the adopting statute makes no reference to any particular statute or part of statute by its title or otherwise, but refers to the law generally which governs a particular subject, the reference in such a case includes not only the law in force at the date of the adopting act, but also all subsequent laws on the particular subject referred to . . . ." A municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against state law. *Jaramillo* v. *City of Homestead,* 322 So.2d 496 (Fla. 1975). A municipality by ordinance may adopt state misdemeanor statutes by specific reference or by general reference, such as that contained in an ordinance making it unlawful to commit, within city limits, any act which is or shall be recognized by the laws of the state as a misdemeanor. An adoption by general reference of a misdemeanor statute permits subsequent amendments, revisions and repeals of the laws by the state legislature to apply to the municipal ordinances.

Item number: 4

§ 810.08, Florida Statutes

§ 810.08. Trespass in structure or conveyance

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2) (a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and he or she reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of this paragraph, shall not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(3) As used in this section, the term "person authorized" means any 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 the case of a threat to public safety or welfare.

HISTORY: S. 34, ch. 74-383; s. 22, ch. 75-298; s. 2, ch. 76-46; s. 1, ch. 77-132; s. 33, ch. 88-381; s. 185, ch. 91-224; s. 1233, ch. 97-102; s. 4, ch. 2000-369.

§ 810.09, Florida Statutes

§ 810.09. Trespass on property other than structure or conveyance

(1) (a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in *s. 810.011*; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(b) As used in this section, the term "unenclosed curtilage" 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.

(2) (a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in *s. 775.082* or *s. 775.083*.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in *s. 775.082* or *s. 775.083*.

...

(3) As used in this section, the term "authorized person" or "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.

HISTORY: S. 35, ch. 74-383; s. 22, ch. 75-298; s. 3, ch. 76-46; s. 2, ch. 80-389; s. 34, ch. 88-381; s. 186, ch. 91-224; s. 2, ch. 94-263; s. 2, ch. 94-307; s. 48, ch. 96-388; s. 1818, ch. 97-102; s. 3, ch. 97-201; s. 5, ch. 2000-369; s. 2, ch. 2001-182; s. 47, ch. 2001-279; s. 36, ch. 2002-46; s. 14, ch. 2006-289, eff. July 1, 2006; s. 1, ch. 2006-295, eff. July 1, 2006; s. 2, ch. 2007-123, eff. July 1, 2007; s. 205, ch. 2008-247, eff. July 1, 2008.

§ 810.12, Florida Statutes

§ 810.12. Unauthorized entry on land; prima facie evidence of trespass

(1) The unauthorized entry by any person into or upon any enclosed and posted land shall be prima facie evidence of the intention of such person to commit an act of trespass.
(2) The act of entry upon enclosed and posted land without permission of the owner of said land by any worker, servant, employee, or agent while actually engaged in the performance of his or her work or duties incident to such employment and while under the supervision or direction, or through the procurement, of any other person acting as supervisor, foreman, employer, or principal, or in any other capacity, shall be prima facie evidence of the causing, and of the procurement, of such act by the supervisor, foreman, employer, principal, or other person.
(3) The act committed by any person or persons of taking, transporting, operating, or driving, or the act of permitting or consenting to the taking or transporting of, any machine, tool, motor vehicle, or draft animal into or upon any enclosed and posted land without the permission of the owner of said land by any person who is not the owner of such machine, tool, vehicle, or animal, but with the knowledge or consent of the owner of such machine, tool, vehicle, or animal, or of the person then having the right to possession thereof, shall be prima facie evidence of the intent of such owner of such machine, tool, vehicle, or animal, or of the person then entitled to the possession thereof, to cause or procure an act of trespass.
(4) As used herein, the term "owner of said land" shall include the beneficial owner, lessee, occupant, or other person having any interest in said land under and by virtue of which that person is entitled to possession thereof, and shall also include the agents or authorized employees of such owner.
(5) However, this section shall not apply to any official or employee of the state or a county, municipality, or other governmental agency now authorized by law to enter upon lands or to registered engineers and surveyors and mappers authorized to enter lands pursuant to ss. 471.027 and 472.029. The provisions of this section shall not apply to the trimming or cutting of trees or timber by municipal or private public utilities, or their employees, contractors, or subcontractors, when such trimming is required for the establishment or maintenance of the service furnished by any such utility.
(6) The unlawful dumping by any person of any litter in violation of s. 403.413(4) is prima facie evidence of the intention of such person to commit an act of trespass. If any waste that is dumped in violation of s. 403.413(4) is discovered to contain any article, including, but not limited to, a letter, bill, publication, or other writing that displays the name of a person thereon, addressed to such person or in any other manner indicating that the article last belonged to such person, that discovery raises a mere inference that the person so identified has violated this section. If the court finds that the discovery of the location of the article is corroborated by the existence of an independent fact or circumstance which, standing alone, would constitute evidence sufficient to prove a violation of s. 403.413(4), such person is rebuttably presumed to have violated that section.

HISTORY: S. 4, ch. 76-46; s. 123, ch. 94-119; s. 3, ch. 94-263; s. 1235, ch. 97-102.

Item number: 5

Florida ordinances on squatters and trespass

Squatting:

Indian River Shores

Sec. 100.08. - Use of vacant land or islands adjacent to docking for **squatting.**

Vacant land or islands, whether public or private, shall not be used for **squatting** or for any use not permitted by the land development regulations and building regulations pertaining to such land. This subsection shall not prevent persons from picnicking at publicly-owned unrestricted islands.

(Ord. No. 428, § 8, 5-25-95)

Vero Beach

Under Chapter 31 on Boats and Waterways:

Sec. 31.08. - Use of vacant land or islands adjacent to docking for **squatting**.

Vacant land or islands, whether public or private, shall not be used for **squatting** or for any use not permitted by the zoning and building regulations pertaining to such land. This section shall not prevent persons from picnicking at publicly owned unrestricted islands.

(Ord. No. 84-26, § 1, 10-16-1984)

City of Hialeah

Sec. 78-38 - Registration of properties with mortgages in default by mortgagees

* * *

(d) Maintenance and security standards. Properties registered pursuant to this section must be kept in accordance with the standards set forth in sections 78-31, 78-32 and 78-34 of the Code. In addition, properties shall be maintained free from weeds, overgrown grass or brush, dead vegetation, garbage, trash, junk, debris, any accumulation of newspapers, circulars, flyers, discarded personal items such as furniture, clothing, appliances, or any other items leading a reasonable person to believe the property is not being properly maintained or is abandoned. Weeds, grass, brush, or dead vegetation shall not be over six inches in height. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure. Pools, spas, fountains, ponds, or outdoor aquariums shall be kept in working order so as to prevent the creation of an environment for the breeding of mosquitoes or other unsanitary environment through the accumulation of

stagnant or polluted water, pollutants and/or debris. Water clarity shall be such that the bottom of the pool or spa can be seen from the pool or spa deck. If the pool or spa is emptied, then it must be securely covered. Doors, windows, gates, fences and all other openings of such size to allow a child or adult to access the interior of any structure on the property shall be kept locked and secured to prevent any trespassers, **squatters** or other unauthorized persons.

* * *

(Ord. No. 2012-11, § 1, 2-28-2012)

Pasco County

Sec. 18-156. - Inspections.

The owner's local agent shall inspect all registered properties on a monthly basis to determine if the property is abandoned, vacant, or shows evidence of vacancy, or evidence of unlawful occupation (i.e, **squatters**), and to ensure that the property is in compliance with this article and other laws and regulations. If the inspection reveals information different than what is contained on the registry, the owner shall update the registry within ten days of the inspection.

(Ord. No. 10-49, § 6, 12-7-10)

Trespass:

City of St. Petersburg

Sec. 20-29. - Trespass prohibited; authorization to issue trespass warning for private property.

(a) It shall be unlawful and a trespass for any person to, without authority of law, go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted on such lands, buildings or premises or any part, portion or area thereof, at a place or places where the sign may be reasonably seen with letters not less than two inches in height.

(b) It shall be unlawful and a trespass for any person to enter or remain in any unoccupied or unfinished building or structure without the consent of the owner or agent thereof.

(c) For the purposes of this section, the term "person lawfully in charge" includes Officers of the City Police Department when the owner, lessee, custodian, agent, manager, or

other person lawfully in charge of the property provides written authorization, according to procedures set out by the Chief of Police, for Police Officers to issue trespass warnings. Such authorizations shall be kept on file in the City Police Department.

(Code 1992, § 20-29; Ord. No. 718-G, § 1, 3-3-2005)

State law reference— Burglary and trespass, F.S. ch. 810.

Sec. 20-30. - Trespass warnings; authorization to issue trespass warning for public property.

(a) The City employees or officials, or their designees, having control over a City facility, building, or outdoor area, including municipal parks, are authorized to issue a trespass warning to any individual who violates any City ordinance, rule or regulation, or State law or lawful directive of a City employee or official which violation was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.

(b) When no other City employee or official having control over a City facility, building, or outdoor area, including municipal parks, is present, a Police Officer is authorized to issue a trespass warning to any individual who violates any City ordinance or State law which was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.

(c) For the purpose of this section, right-of-way shall include those sidewalks which are closest to a paved street, provided that the street side edge of the sidewalk is within 20 feet of the curbline closest to the property.

(d) Trespass warnings shall be issued as follows:

(1) For the first violation, the individual may be issued a trespass warning for a period not to exceed one year.

(2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two years.

(e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the City employee or official having control over the City park, facility, building or outdoor area. The written trespass warning shall advise of the right to appeal and the location and telephone number for filing the appeal.

(f) Any person found on or within any City facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.

(g) The City employee or official having control over a City facility, building, or outdoor area, including municipal parks, may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

(h) This section shall not be construed to limit the authority of any City employee or official to issue a trespass warning to any person for any lawful reason for any City property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or official.

(i) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:

(1) An appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.

(2) The appeal shall be filed at the information desk of the St. Petersburg Police Department located at 1300 First Avenue North.

(3) Appeals shall be heard by a Hearing Master which the City contracts with to provide this service.

(4) Within five days following the filing of the appeal, the Hearing Master shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of two ways:

a. By leaving or posting the notice at the information desk of the St. Petersburg Police Department; or

b. By telephone if a telephone number has been provided. If appellant can not be reached by telephone, then notice at the information desk shall be sufficient.

(5) The Hearing Master shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 30 days from the filing of the appeal.

(6) Copies of documents in the City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.

(7) The appellant and the City shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at their own expense.

(8) The Hearing Master shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

(9) The City shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.

(10) If the appellant fails to attend a scheduled hearing, the Hearing Master shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.

(11) Within five days of the hearing, the Hearing Master shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the information desk of the St. Petersburg Police Department.

(12) The decision of the Hearing Master shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant. The City may not appeal any decision of the Hearing Master.

(13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

(Code 1992, § 20-30; Ord. No. 718-G, § 2, 3-3-2005; Ord. No. 2-H, §§ 1, 2, 11-3-2011; Ord. No. 26-H, §§ 1, 2, 6-21-2012)

Plantation

Sec. 17-5. - Trespass.

(a) It shall be unlawful for any person to commit an act of trespass in the city, either upon private property or public property.

(b) "Trespass," for the purpose of this section, shall mean:

(1) Entering upon or refusing to leave any private property of another, either where such property has been posted with "No Trespassing" signs, or where immediately prior to such entry, or subsequent thereto, notice is given by the owner or occupant, orally or in writing, that such entry or continued presence is prohibited; or

(2) Entering upon or refusing to leave any public property in violation of regulations promulgated by the official charged with the security, care or maintenance of the property and approved by the governing body of the public agency owning the property, where such regulations have been conspicuously posted or where immediately prior to such entry, or subsequent thereto, such regulations are made known by the official

charged with the security, care or maintenance of the property, his agent or a police officer.

(Code 1964, § 17-31)

Cross reference— Uninvited solicitation constituting trespass, § 14-136(c); loitering near schools prohibited, § 17-8.

Sec. 17-5.1. - Pre-authorization of police officers to enforce trespass statute on private property.

(a) Declaration of public purpose. The city council hereby declares and finds that pre-authorizing police officers to enforce the state trespass statutes, Sections 810.08 and 810.09, Florida Statutes, on private property, serves a valid public purpose. Specifically, the city council finds that the Florida Legislature has made it a misdemeanor for a person to defy an order from the owner of private property, or an authorized person, to leave the owner's property. Pre-designating police officers to issue warnings to leave on behalf of private property owners will protect the public from breaches of the peace which might occur if property owners are required to protect their property and expel trespassers by force. Additionally, the protection of private property is one of the primary missions of any police agency and in pursuit of that mission the police department has proposed a program whereby private property owners may pre-authorize police officers to issue warnings to trespassers on their behalf in order to safeguard their property.

(b) Pre-authorization authority. City police officers may be pre-authorized in writing by a private property owner within the city to issue orders to trespassers directing them to leave the owner's property. When police officers have been pre-authorized by a private property owner, they shall be considered authorized persons for the purpose of invoking the provisions of Section 810.08 and 810.09(2)(a), Florida Statutes.

(c) Written pre-authorization. Pre-authorization shall be in writing on a form approved by the city attorney's office.

(d) Refusal to obey an order to leave the premises. It is unlawful for any person, who enters on private property without being authorized, licensed or invited, to refuse to obey an order to leave the premises given by a police officer who is pre-authorized to issue such an order under the provisions of this section. A violation of this section, in addition to being a misdemeanor under Sections 810.08 or 810.09(2)(a), Florida Statutes (as the case may be), shall be a City Code violation punishable as provided in section 17-5.1 of the Code.

(Ord. No. 1980, § 1, 4-27-94)

Lake Worth

Sec. 2-200. - Short title.

This article shall be known as the "City of Lake Worth Chronic Nuisance Property Code" or "chronic nuisance property code."

(Ord. No. 2012-01, § 2, 1-3-12)

Sec. 2-201. - Pattern of nuisance activity.

(a) Nuisance activity. Nuisance activity means any activities relating to the following violations, whenever engaged in by property owner, agent, tenant, or invitee of the property owner or tenant:

(1) Chapter 5—Alcoholic beverages.

(2) Chapter 15, article I, sections 15-24 through 15-24.10—Noise control regulations.

(3) Chapter 15, article I, section 15-42—Loitering and prowling for the purpose of illegally using, possessing and selling controlled substances.

(4) Chapter 15, article V—Sexual offenders & sexual predators residence.

(5) F.S. § 767.12—Dangerous dogs.

(6) F.S. § 790.15(1)—Discharging firearm in public.

(7) F.S. § 796.06—Renting space to be used for prostitution.

(8) F.S. § 796.07—Prostitution.

(9) F.S. § 800.03—Exposure of sexual organs.

(10) F.S. § 806.13—Criminal mischief.

(11) F.S. § 810.08—Trespass in structure or conveyance.

(12) F.S. § [810.09]—Trespass on property other than structure or conveyance.

(13) F.S. § 812.014—Theft.

(14) F.S. § 812.019—Dealing in stolen property.

(15) F.S. § 812.173—Conveyance business security.

(16) F.S. § 824.01—Nuisance.

(17) F.S. § 828.12—Cruelty to animals.

(18) F.S. § 856.011—Disorderly intoxication.

(19) F.S. § 856.015—Open house parties.

(20) F.S. § 856.021—Loitering or prowling.

(21) F.S. § 856.022—Loitering or prowling in close proximity to children.

(22) F.S. ch. 874—Criminal gang enforcement and prevention.

(23) F.S. § 877.03—Breach of the peace; disorderly conduct.

(24) F.S. ch. 893—Any offense under the Florida Comprehensive Drug Abuse Prevention and Control Act.

(25) Any other offense under state or federal law that is punishable by a term of imprisonment exceeding one (1) year.

(b) Pattern of nuisance activity. Real property shall be deemed to exhibit a pattern of nuisance activity if:

(1) The city's law enforcement has responded to three (3) or more nuisance activities at the property within thirty (30) days;

(2) The city's law enforcement has responded to seven (7) or more nuisance activities at the property within six (6) months;

(3) An alcoholic beverage establishment that employs private security is located on the property and the city's law enforcement has responded to five (5) or more nuisance activities at the property within thirty (30) days or twenty (20) or more nuisance activities at the property within six (6) months; or

(4) As otherwise provided by this code.

(c) Construction and application. Pattern of nuisance activity shall not be construed to include:

(1) A nuisance activity where the property owner, agent, tenant, or invitee of the property owner, agent or tenant is a victim of a crime;

(2) A nuisance activity that does not arise from the conduct of the property owner, agent, tenant, or invitee of the property owner, agent or tenant; or

(3) A complaint or call for service to which the city responded and the city determined that no violation was committed.

(d) Separate occurrences. For purposes of this article, each day that the police department responds to a nuisance activity at the property shall be a separate occurrence.

(Ord. No. 2012-01, § 2, 1-3-12)

Sec. 2-202. - Declaration of chronic nuisance property; action plan.

(a) Declaration of chronic nuisance property. If a pattern of nuisance activity exists upon real property, the city may declare the property to be a chronic nuisance. The city shall notify the property owner by certified mail, return receipt required and by first class mail to the address listed on the ad valorem tax roll. Notice shall be posted at the property where the nuisance activities occurred. The declaration of chronic nuisance property shall contain at least the following information:

(1) A reference to chapter 2, article XIX (the "City of Lake Worth Chronic Nuisance Property Code");

(2) The address and parcel control number of the property;

(3) The dates that the nuisance activities occurred at the property;

(4) A description of the nuisance activities;

(5) A statement that the property owner is required to provide the city with a written action plan outlining the specific measures that the property owner will take to curtail or eliminate the re-occurrence of nuisance activities on the property. A statement that the action plan must be provided to the city no later than fifteen (15) days from the date of declaration of chronic nuisance property;

(6) A statement that failure to provide the city with a written action plan will result in the entry of a chronic nuisance service order by the special magistrate;

(7) A statement that the costs of any chronic nuisance services provided by the city to a property that has been declared to be a chronic nuisance may be levied against the property as a non-ad valorem assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the property and equal in rank and dignity with a lien for ad valorem taxes; and

(8) A statement that unpaid assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632.

(b) Development of action plan. The property owner shall provide the city with a written action plan outlining the specific measures that the owner will take to curtail or eliminate the re-occurrence of nuisance activities at the property. The property owner shall provide

the action plan to the city no later than fifteen (15) days from the date of the declaration of chronic nuisance property. Failure to provide the city with a timely action plan shall be a violation of this article.

(c) Adequacy and implementation of action plan. If the city determines that the action plan is adequate to curtail or eliminate the re-occurrence of nuisance activities on the property, the city shall notify the property owner by first class mail. The city shall establish a reasonable time period not exceeding forty-five (45) days from the date that the action plan is determined to be adequate to implement the action plan. The city may extend the time period beyond the forty-five (45) days if additional time is necessary to implement the action plan. Failure to implement the action plan within the time period established by the city shall be a violation of this article. If the property owner implements the action plan within the time period established by the city, the declaration of chronic nuisance will be closed and no further action shall be required, except that the city may require the property owner to revise the action plan in the event that a nuisance activity re-occurs.

(d) Revision of inadequate action plant. If the city determines that the action plan is not adequate to curtail or eliminate the re-occurrence of nuisance activities on the property, the city may require the property owner to revise the action plan. The property owner shall provide the revised action plan to the city no later than ten (10) days from the date that the action plan is determined to be inadequate. Failure to revise the action plan or not provide the city with a timely revised action plan shall be a violation of this article. The provision of an inadequate action plan on three (3) consecutive occasions shall be a violation of this article and my result in a chronic nuisance service order against the property.

(e) Factors determining adequacy of action plan. Factors to be considered in determining the adequacy of an action plan may include, but shall not be limited to:

(1) Commencement of an eviction action pursuant to F.S. ch. 83, to remove those individuals engaged in the nuisance activity from the property;

(2) Implementation of crime prevention through environmental design (CPTED) measures;

(3) Frequency of site visits and inspections at various times of both day and night;

(4) Hiring of property management;

(5) Hiring of private security;

(6) Installation of security cameras;

(7) Use of written lease agreement;

(8) Criminal background checks for prospective tenants and lease renewals;

(9) Posting of "no trespassing" signs at the property and execution of a "no trespass affidavit" authorizing the police department to act as an agent of the property owner to enforce trespass statutes on the property;

(10) Written documentation of all efforts to curtail or eliminate the re-occurrence of nuisance activities on the property;

(11) Any other action that the city determines is reasonably sufficient to curtail or eliminate the re-occurrence of nuisance activities on the property.

(Ord. No. 2012-01, § 2, 1-3-12)

Juno Beach

Sec. 16-1. - Adoption of state provisions that recognize certain acts as misdemeanors.

It shall be unlawful to commit, within the town limits, any act which is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden. Whoever shall violate the provisions of this chapter, shall be punished as for a violation of this Code.

(Code 1980, § 9-1; Ord. No. 172, § 2, 12-8-1976)

Annotations—Municipal authority to adopt state misdemeanors, MacFarland v. Roberts, 74 So.2d 88 (Fla. 1954); Jaramillo v. City of Homestead, 322 So.2d 496 (Fla. 1975); adoption includes future enactments and amendments, State v. Smith, 189 So.2d 846 (4th DCA 1966).

* * *

Sec. 16-3. - "No trespassing" or "keep off the grass" areas.

(a) Posting. The town chief of police shall erect "no trespassing" or "keep off the grass" signs wherever he determines:

(1) That property is being used to the detriment of the health, safety, welfare or morals of persons or property in the vicinity of the property to be posted;

(2) That property is being used for illegal purposes, or disorderly conduct; or

(3) That property is being used in such a manner that its use entails unusual extraordinary or burdensome expense or police operation by the town.

(b) Obedience. Except as otherwise provided herein, it shall be unlawful for any person or group of persons to walk, loiter, gather or assemble on any property of the town which

has not been designated as a park and which has been posted with "no trespassing" or "keep off the grass" signs.

(c) Permits. A permit will be required from the town clerk before an assembly will be allowed on any such posted property. The application for a permit shall be filed with the town clerk and shall be in the form provided for special permits in parks.

(Code 1980, § 9-4; Ord. No. 111, § 11, 11-9-1970)

State law reference— Burglary and trespass, F.S. ch. 810.
Sec. 16-6. - Settling, trespassing or lodging on private or public property without consent of owner.

(a) Private lands. It shall be unlawful for any person to settle, trespass or lodge upon the private lands of another within the town without having been authorized, licensed or invited to do so by an authorized agent, or lessee of said property.

(b) Posting of notice; fencing; cultivation. Notice against entering or remaining on the premises, or against settling, trespassing or lodging thereon, given by actual posting of the premises or by the fencing or cultivation thereof, shall be prima facie evidence of the lack of such consent to do so by the owner, authorized agent or lessee of said property.

(c) Public lands. It shall be unlawful for any person to settle, trespass or lodge upon public lands or real property owned by the town, the county, the state or the government agencies located within the town without the consent of such governmental owner, its duly authorized agent or its tenant, authorizing, licensing or inviting such person to do so. For the purposes of this subsection, the term "public lands or real property" includes but is not limited to the following: public streets, public roads, highways, swales, drainageways, alleyways and other rights-of-way, public parks, parkways, open spaces, conservation and preservation areas, recreational land and parking lots, including any buildings or structures located thereon.

(d) Violation; notice. Any person found violating the provisions of this section shall be given 24 hours' notice to cease and desist in such settling, trespassing or lodging.

Item number: 6

Ordinances from other states on squatters and trespass

Squatters:

Modesto, California

Chapter 7 – Squatter Camps.

5-7.01 - Definitions.
Unless otherwise expressly stated, whenever used in this chapter, the following terms shall be defined as follows:

(a) "Health Officer" shall mean the Health Officer of the City and his duly authorized representatives and deputies.

(b) "Squatter camp" is an area or parcel of land upon which any person has settled or located, or which he occupies, without having a bona fide claim or color of title thereto, or without the express consent of the owner or person legally in charge thereof or the agent of the same, and which is occupied or inhabited in violation of Chapter 1 of Title 9 of this Code (Building Regulations), or the State Housing Act of the State of California, (Sections 15000 through 17902, as amended, of the Health and Safety Code of the State of California). It includes any tent camp space, house court and every other kind of camp, tent, shelter, or structure, or collection of tents, shelters, or structures of any kind established, constructed, maintained, or operated thereon.

(c) "Squatter" is one who settles or locates on land enclosed or unenclosed with no bona fide claim or color of title or without the expressed consent of the owner or person legally in charge of the land.

(Sec. 1, Ord. 1112-N.S.)

5-7.02 - Unlawful Occupancy.

No person shall settle or locate on or occupy any land without a bona fide claim or color of title thereto, or without the express consent of the owner or person legally in charge of said land, or erect or construct any tent, shelter or structure of any kind thereon.

(Sec. 2, Ord. 1112-N.S.)

5-7.03 - Enforcement.

It shall be the duty of both the owner and the person legally in charge of the land upon which any squatter camp is located to see that all of the provisions of this chapter are complied with.

(Sec. 3, Ord. 1112-N.S.)

5-7.04 - Nuisance.

Every squatter camp as defined in subsection (b) of Section 5-7.01 is hereby declared to be a public nuisance. Such nuisance may be abated in the manner provided by law for the abatement of public nuisances.

(Sec. 4, Ord. 1112-N.S.)

5-7.05 - Procedure for Abatement of Nuisance.

The Health Officer is hereby authorized to abate such nuisance under the following alternative and supplemental procedure:

(a) The Health Officer may serve notice upon the owner or person in charge of the property upon which said squatter camp is located. Such notice shall be in writing and must be signed by the Health Officer, must be served upon the owner or the person in charge of the property upon which said squatter camp is located according to the provisions of Section 1162 of the Code of Civil Procedure of California. Such notice shall require that said squatter camp be completely abandoned, abated, closed and vacated and demolished within three (3) days from the date of service of notice upon the owner or operator or person in charge thereof. Failure or refusal on the part of any such owner or person in charge of such squatter camp to abate, vacate and close it in compliance with such written notice shall constitute a violation of this chapter.

(b) Upon such failure or refusal on the part of the owner or person in charge of the land upon which the squatter camp is located, the Health Officer may enter the said property and post notices notifying all persons that said squatter camp is condemned as a public nuisance and that all persons shall immediately vacate the premises upon which such squatter camp space is located. Any person who shall thereafter enter in or upon or make any use of such squatter camp shall be guilty of a violation of this chapter.

(c) In case the Health Officer is unable to ascertain or find the owner of the land upon which any such squatter camp is located, or where no person is in charge of the same, or where the owner of the land refuses to act, as an alternative procedure, the Health Officer may notify all squatters within such squatter camp that the same has been condemned and to remove therefrom immediately. In addition to such oral notification, the Health Officer shall post a written notice at a conspicuous place, within said squatter camp, notifying all squatters to forthwith and immediately remove therefrom and vacate said squatter camp. Failure or refusal of any person to comply with such notice shall be a violation of this chapter.

(Sec. 5, Ord. 1112-N.S.)

5-7.06 - Enforcement.

For the purpose of securing enforcement of this chapter, the Health Officer and any of his duly authorized representatives or any law enforcement officer shall have the right to

enter upon any public or private property, including any building or habitation, in the City, to inspect all accommodations and installations thereon or therein which may be covered by the provisions of this chapter.

(Sec. 6, Ord. 1112-N.S.)

5-7.07 - Burden of Proof.

In any prosecution, and in any action to abate or enjoin any nuisance or other acts under this chapter, the burden of proving bona fide claim to land, color of title to land, or permission from the owner or person in charge of land, shall rest upon the person occupying the land, squatter camp or space involved.

(Sec. 7, Ord. 1112-N.S.)

Trespass:

Ione, California

8.06.050 - Security requirements.

A. Responsible persons shall secure all vacant and abandoned properties against unauthorized entry. This includes, but is not limited to, closing and locking all windows, doors (including sliding doors and garage doors), gates, and any other openings of such size that would allow a child to access the interior of the property and buildings or structures thereon. If doors or windows cannot be secured by other means, they may be boarded.

B. If any vacant or abandoned property is owned by an out of area beneficiary, trustee, or owner, such person or entity shall contract with a local property management company to perform weekly inspections to ensure that the requirements of this chapter, and any other applicable laws, are being met.

C. All vacant and abandoned property shall be posted with the name and a 24-hour contact phone number for the trustee, beneficiary, owner or local property management company responsible for the maintenance and security of the property. The posting shall conform to the following requirements:

1. The posting shall be 18" ;times; 24" and shall be of a font that is legible from a distance of 45 feet.

2. The posting shall state "THIS PROPERTY MANAGED BY _____. TO REPORT PROBLEMS OR CONCERNS, CALL ;daterule;."

3. The posting may be placed in any of the following locations, so long as the posting is visible from the street facing the front of the property:

a. An the interior of a window;

b. Secured to the exterior of the building; or

c. On a stake of sufficient size to support the posting.

Any exterior posing shall be constructed of and printed with weather-resistant materials.

(Ord. No. 424, § 1, 4-21-2009)

8.06.060 - Additional authority.

In addition to the enforcement remedies established in Chapter 1.10, the city manager, police chief, fire chief, finance director, or their authorized agents shall have the authority to require a responsible person for any property subject to this chapter to implement additional maintenance and/or security measures, including, but not limited to, installing additional security lighting, increasing on-site inspection frequency, disconnecting utilities and removing the meter boxes, or other measures as may be reasonably required to arrest the decline of the property and prevent unauthorized entry.

(Ord. No. 424, § 1, 4-21-2009)

8.06.080 - Alternative monetary penalties.

A. This section is intended to carry out the provisions of California Civil Code Section 2929.3. Nothing in this section shall be interpreted or implemented in a manner that is inconsistent with state law. If there is a conflict between the provisions of state law and this section, state law shall control.

B. The city may elect to impose monetary penalties on a legal owner, pursuant to California Civil Code section 2929.3, if that legal owner fails to maintain vacant residential property that is either purchased at a foreclosure sale or acquired through foreclosure under a mortgage or deed of trust.

1. For purposes of this section, "fails to maintain" means failing to care for the exterior of the property, including, but not limited to, permitting excess foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers, squatters or other unauthorized persons from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

C. The city may impose a fine of up to $1,000.00 per day for each day that the legal owner fails to maintain the property as required by this section, commencing on the day following the expiration of the period to remedy the violation, as established by the city in subsection D.

1. In determining the amount of the fine, the city shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation.

2. Fines and penalties collected pursuant to this section shall be directed toward local nuisance abatement programs.

3. Pursuant to Section 2929.3 of the California Civil Code, the city may not impose fines on a legal owner under both this Section and any other local ordinance. However, Section 2929.3 of the California Civil Code shall not preempt any local ordinance.

4. Notwithstanding subsection C.3., the rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

D. If the city imposes a fine pursuant to this section, the city shall give notice of the alleged violation to the legal owner. The notice shall include a description of the conditions that gave rise to the alleged violation, and state the city's intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days.

1. The notice shall be mailed to the address provided in the deed or other instrument as specified in subdivision (a) of Section 27321.5 of the Government Code, or, if none, to the return address provided on the deed or other instrument.

2. The city may provide less than 30 days' notice to remedy a condition, if the city determines that a specific condition of the property threatens public health or safety and the notice of violation states that there is a threat to public health or safety and lists the required time to correct the violation.

E. If the city imposes a fine pursuant to this section, the city shall set an administrative hearing at which the legal owner may contest the fine. The city shall set the hearing within ten days after the expiration of the period in which the legal owner must correct the violation, as provided in the notice issued pursuant to subsection D. The administrative hearing notices and procedures shall be governed by the procedures set forth in Article VI of Chapter 1.10

(Ord. No. 424, ß 1, 4-21-2009)

Memphis, Tennessee

Sec. 14-8-4. - Definitions.

* * *

Vacant property means: (1) without legal occupancy and not maintained in a manner allowing normal human habitation with access to utility services such as light, water, heat;

(2) currently unoccupied; or (3) occupied by vagrants, squatters, trespassers or other persons having no legal right to occupy premises.

* * *

Item number: 7

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2004-04
Date: February 13, 2004
Subject: Law Enforcement Officer, trespass on private property

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Interim Police Chief Ronnie Bishop
Fort Walton Beach Police Department
7 Hollywood Boulevard Northeast
Fort Walton Beach, Florida 32538

RE: LAW ENFORCEMENT OFFICERS-TRESPASS-PROPERTY- authority of law enforcement officer to communicate order to leave private property on behalf of private landowner. ss. 810.08 and 810.09, Fla. Stat.

Dear Chief Bishop:

You ask substantially the following question:

Does an on-duty law enforcement officer have the authority to enforce a private landowner's written authorization to communicate an order to an alleged trespasser to leave the private property?

According to your letter, the Fort Walton Beach Police Department maintains a list of businesses, residences, and vacant property where the owner has given the department a letter authorizing law enforcement officers to remove trespassers from the property. Your office is aware of Attorney General Opinion 90-08, in which this office considered the authority of law enforcement officers to act as the agents of private landowners in ordering trespassers from private property. You ask whether this office maintains the opinion reached in Attorney General Opinion 90-08.

Sections 810.08 and 810.09, Florida Statutes, respectively define the offenses of trespass in a structure or conveyance and trespass on property other than a structure or conveyance. For example, section 810.09(1)(a), Florida Statutes, states that "[a] person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance . . . [a]s to which notice against entering or remaining is given, .

. . commits the offense of trespass on property other than a structure or conveyance." Furthermore, section 810.09(2)(b), Florida Statutes, provides:

"If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person . . . the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083."

Similarly, section 810.08(1), Florida Statutes, provides that "[w]hoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance."

Thus, to commit a trespass under the above provisions, the offender must defy an order to leave that has been personally communicated to him by the owner of the premises or some other authorized person. The statute permits an "authorized person" to "stand in the shoes of" the owner and order a trespasser to leave. The Supreme Court of Florida, interpreting the term "authorized person" for purposes of section 810.09, Florida Statutes, has stated:

"'Common understanding' dictates that the phrase 'other authorized person' is to be read in light of the preceding phrase 'owner of the premises' . . . . In regard to private land, an 'authorized person' is one who receives either express or implied authorization from the owner."[1]

In Attorney General Opinion 90-08, this office addressed whether on-duty police officers could be pre-authorized to act as the agents of a private landowner for the purpose of communicating to an alleged trespasser an order to leave the private property pursuant to section 810.09(2)(b), Florida Statutes. This office found no statutory provision that specifically authorized local law enforcement officers to be designated as agents of private persons. Moreover, it was concluded that the predesignation of on-duty law enforcement officers to act as agents of private landowners to communicate an order to leave the private property would serve primarily a private purpose in violation of Article VII, section 10, Florida Constitution.[2] This office noted, however, that there may be instances where, in light of an immediate threat to the public safety and welfare, it is in the public's interest to permit a law enforcement officer to order, on behalf of a private landowner, an alleged trespasser to leave the property.[3]

During the 2000 legislative session sections 810.08 and 810.09, Florida Statutes, were amended to provide a statutory definition of the term "authorized person." Section 810.09(3), Florida Statutes, as amended by section 5, Chapter 2000-369, Laws of Florida, provides:

"As used in this section, the term 'authorized person' or 'person authorized' means any owner, or his or her agent, or *any law enforcement officer whose department has received written authorization from the owner*, or his or her agent, to communicate an order to leave the property in the case of a threat to public safety or welfare." (e.s.)

Similarly, section 810.08(3), as amended by section 4, Chapter 2000-369, Laws of Florida, defines the term "person authorized" to mean "any 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 the case of a threat to public safety or welfare." (e.s.)

An examination of the legislative history of the 2000 amendments indicates that the definitions to sections 810.08 and 810.09, Florida Statutes, were added to address the 1990 opinion of this office.[4] Thus, unlike the situation presented in Attorney General Opinion 90-08, there is now specific legislative authorization for a law enforcement officer to act as an "authorized person" of a private landowner to order an alleged trespasser to leave the private property in the case of a threat to public safety and welfare when the law enforcement agency has received written authorization from the owner.

Accordingly, I am of the opinion that an on-duty law enforcement officer has the authority to enforce a private landowner's written authorization to communicate on behalf of the landowner an order to an alleged trespasser to leave the private property in the case of a threat to public safety or welfare. To the extent that previous opinions of this office are inconsistent with the conclusion reached herein, they are hereby modified.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

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[1] *State v. Dye*, 346 So. 2d 538, 541-542 (Fla. 1977).

[2] Article VII, s.10, Fla. Const., prohibits the use of public funds for a private purpose, by precluding the state, a county or municipality or agency thereof from using its taxing power or credit to aid any private interest or individual.

[3] This office noted that such situations would depend upon the particular facts and must be determined on a case by case basis.

[4] *See* Senate Staff Analysis and Economic Impact Statement on CS/SB 1422, dated April 20, 2000, stating that sections 2 and 3 of the bill

"amend ss. 810.08 and 810.09, F.S., respectively, to provide definitions for "authorized person" and "person authorized." These terms are defined to include the owner or his or her agent or any law enforcement officer whose department has received written authorization from the owner or his or her agent to communicate an order to depart the property in the case of a threat to public safety or welfare. This provision is designed to address a 1990 Attorney General Opinion which stated that there exists no authority to preauthorize on-duty police officers to act as a private landowner's agent in warning individuals to leave the private landowner's property."

While CS/SB 1422 died on the calendar, the identical language was added to SB 2252 which was enacted as Ch. 00-369, Laws of Fla. *See* Senate Floor Debate on SB 2252, April 5, 2000, Tape 3 of 13, in which Senator Bronson, in explaining the amendment to the bill which added the language defining "authorized person" and "person authorized," stated that "[t]his is the subject matter of SB 1422 which is on special order."

Florida Attorney General
Advisory Legal Opinion

Number: AGO 96-49
Date: June 25, 1996
Subject: Municipalities, trespass on private dock

Mr. James W. Denhardt
City of Treasure Island Attorney
2700 First Avenue North
St. Petersburg, Florida 33713

RE: MUNICIPALITIES--TRESPASS--SOVEREIGN LANDS--WHARVES AND DOCKS--RIPARIAN RIGHTS--municipality may enact trespass ordinance for unauthorized mooring to or entry on a private dock located within municipality consistent with general trespass law. s. 810.09, Fla. Stat.

Dear Mr. Denhardt:

As the attorney for the City of Treasure Island, you ask substantially the following question:

May a municipality enact and enforce ordinances to prohibit the unauthorized trespass upon, or the unauthorized mooring of a boat to, a privately-owned dock located over state-owned submerged lands within the corporate limits of the municipality, when the property owner's right to such dock is derived through riparian or littoral property rights?

In sum:

A municipality may enact and enforce an ordinance to prohibit the unauthorized trespass upon or the unauthorized mooring of a boat to a privately-owned dock located over state-owned submerged lands, within the city's corporate limits, consistent with the general laws applicable to trespass.

The general legal principle applicable to your inquiry is that a municipality has civil and criminal jurisdiction over property within its corporate boundaries and may regulate and restrict

certain activities reasonably calculated to protect the public health, safety, and welfare.[1] The power of a municipality to regulate, however, is subject to the state's paramount power to regulate and control the use of its sovereign lands. To the extent that any such regulation has been preempted by the state or is inconsistent with general law or with regulations adopted by the state, any attempted municipal regulation would be invalid.[2]

Application of a trespass statute or ordinance to a private dock would appear to depend upon the nature of the ownership of such property. It has been recognized that riparian owners have historically been entitled to greater rights in relation to the waters that border their land than enjoyed by the public generally.[3] As riparian owners, they have the exclusive right of access over their own property to the water. The public has no right to cross the riparian owner's private property to reach the navigable waters.[4]

Subject to applicable regulations and permitting procedures, the owner of riparian property may construct and maintain a wharf, dock, or pier from his or her land to the navigable portion of adjoining waters.[5] This entitlement, however, is subject to the paramount rights of the public and the private rights of other riparian landowners.[6] The Supreme Court of Florida in several cases has found this entitlement to be a common law right that accompanies the ownership of the riparian property.[7]

Thus, riparian property owners in Florida have a qualified right to build docks or "wharf out" to navigable water and have exclusive rights to use their private property. It would appear, therefore, that a dock or wharf constructed by the riparian owner with the consent of the state operates as an extension of the riparian owner's private property interest that may be protected under the laws of this state.

Section 810.09(1), Florida Statutes, provides:

"Whoever, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, commits the offense of trespass on property other than a structure or conveyance."[8]

In the absence of actual notice being given to an individual who is on or moored to a private dock without permission, the property must

either be posted, fenced or under cultivation in order to provide the necessary element of notice. Of these three methods of notice, posting and fencing lend themselves more readily in applying the trespass statute to a private wharf or dock. While no definition for the term "posting" is provided for purposes of the statute, the term "[p]osted land" is defined as

"land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto, the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line."[9]

Likewise, fencing is defined in terms of land, requiring a fence of substantial construction at least three feet high to enclose the land. No fence, however, is required where the boundary of the land is formed by water.[10]

It would appear that the paramount concern is that an individual be given notice, either by actual communication or through signs or physical boundaries, that defines the area of property subject to the trespass law and warns against entering or remaining on the property.[11] The placement of signs or fencing in compliance with the requirements in Chapter 810, Florida Statutes, appears to provide the necessary notice to allow the trespass statute to be applied to the recognized property rights attendant to a private dock.

Accordingly, it is my opinion that the city may enact an ordinance prohibiting the unauthorized trespass upon or the unauthorized mooring of a boat to a privately-owned dock located over state-owned submerged lands within the corporate limits of the municipality, where such ordinance is consistent with the trespass provisions in Chapter 810, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

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[1] *See* 64 C.J.S. *Municipal Corporations* s. 1816 (1950); *Carter v. Town of Palm Beach*, 237 So. 2d 130 (Fla. 1970); *City of Miami Beach v. Texas Co.*, 194 So. 368 (Fla. 1940); and Ops. Att'y Gen. Fla. 79-71, 74-286 and 73-463.

[2] *See City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[3] *See Board of Trustees of the Internal Improvement Trust Fund v. Madeira Beach Nominee, Inc.*, 272 So. 2d 209, 214 (Fla. 2d DCA 1973).

[4] *Id.* at 214.

[5] Section 253.141(1), Fla. Stat. (1995), defines "riparian rights" as:

"[T]hose incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland."

[6] *See* 65 C.J.S. *Navigable Waters* s. 73 (1966).

[7] *See Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n*, 48 So. 643 (Fla. 1909), and *Freed v. Miami Beach Pier Corporation*, 112 So. 841 (Fla. 1927).

[8] Section 810.011(1), Fla. Stat. (1995), defines "[s]tructure" for purposes of the trespass statute as "a building of any kind, either temporary or permanent, which has a roof over it, together with curtilage thereof." Clearly, therefore, a dock or wharf without a roof over it would not qualify as a structure under the trespass statute.

[9] Section 810.011(5)(a), Fla. Stat. (1995).

[10] *See* s. 810.011(7), Fla. Stat. (1995).

[11] *Cf.* Pointec v. State, 614 So. 2d 570 (Fla. 5th DCA 1993) (where

property is not posted, simple trespass requires proof of actual communication to defendant of notice against entering or remaining on property).

Item number: 8

11 Fla. L. Weekly Supp. 92f

Landlord-tenant -- Eviction -- Daughter of deceased tenant who indicated in first answer to eviction complaint that she was tenant, stated in second answer that she and landlord entered into oral rental agreement, obtained permission to enter rental unit from her mother prior to her death, and did enter premises through key provided by landlord was a tenant subject to action for possession, not squatter or trespasser -- Notice -- Defects -- Tenant who failed to post rent into court registry was not entitled to raise defense that landlord's notice of termination of rental agreement was defective -- Default judgment in favor of landlord affirmed

CHRISTINA SMALLS, Appellant, vs. MONIQUE JOSEPH, Appellee. Circuit Court, 11th Judicial Circuit (Appellate) in and for Miami-Dade County. Case No. 02-396 AP. L.C. Case No. 02-002506 CC20. December 9, 2003. An appeal from the County Court for Miami-Dade County, Fred Seraphin, Judge. Counsel: Steven Elliot Brooks, for Appellant. Bonita Jones-Peabody, for Appellee.

(Before MANUEL A. CRESPO, MINDY SUE GLAZER, and HENRY LEYTE-VIDAL, JJ.)

(CRESPO, J.) This is an appeal from the lower court's entry of a default final judgment in favor of Monique Joseph, the landlord in this case. The factual background is as follows. Ydalia Smalls is a deceased woman who lived in a rental unit owned by Joseph. The appellant, Christina Smalls, is the daughter of the deceased Ydalia Smalls. Shortly before her mother's death, Christina Smalls (hereinafter "Smalls") was given her mother's permission to enter the rental unit. After her mother's death, Smalls gained entry into the rental unit by using a key provided by Joseph, so that Smalls could remove her mother's belongings. Smalls then moved into the rental unit on May 11, 2002, one day after her mother's death. On June 12, 2002, after Ydalia Smalls' death, Joseph filed an action for possession of the premises against "Ydalia Smalls and all others in possession under her." Joseph attached to her complaint a notice of termination of rental agreement that was posted on the door of Smalls' unit. Smalls, who did not initially obtain an attorney, answered the complaint via a handwritten letter.

On July 8, 2002, the matter was set for hearing and trial. Five minutes prior to the start of trial, Smalls retained counsel who moved ore tenus to continue the trial. The court granted the motion, but ordered Smalls to pay $1650.00 rent into the registry of the court. Smalls agreed to deposit the money and the trial was re-set for July 15, 2002. Smalls, through her attorney, later filed a second answer on July 12, 2002, seemingly without leave of court.

During the trial, the court was informed that Smalls disobeyed the order to deposit rent into the registry. The court again instructed Smalls to deposit the rent. Smalls stated that she would deposit the money and even showed the court various checks and money orders in her possession as proof that she had the capacity to deposit the funds. Sometime after the trial, Smalls deposited only $650.00 into the Court registry -- $1000.00 less than the court ordered.

On July 23, 2002, Joseph moved for an entry of default against Smalls as a result of her failure to deposit the requisite funds into the court registry. The trial judge was somehow incorrectly advised that Smalls was in substantial compliance with his order to deposit the rent funds and on August 7, 2002, a final judgment was entered in Smalls' favor. The final judgment was based on deficiencies in

Joseph's notice of termination that rendered it invalid under Florida Statute §83.57.

Joseph filed a motion for rehearing and the court revisited the case. Upon discovering that Smalls had not deposited the required sums into the registry, the court vacated Smalls' judgment and entered a default judgment in favor of Joseph. Smalls appealed from that final order.

The issue in this case is whether a tenant who fails to post rent into the court registry as ordered is entitled to raise the defense that the landlord's notice of termination is defective. We answer the question in the negative in light of Fla. Stat. §83.60(2) and relevant case law. Section 83.60(2) states that in an action by a landlord for possession, if the tenant puts forth any defense other than payment, the tenant must pay into the court registry the rent that accrues during the pendency of the proceeding and the rent as alleged in the complaint or as determined by the court.

Before discussing in more detail the main issue presented in this case, we will first address Smalls' argument that she is not a tenant and as such Joseph's action under Chapter 83 Florida Statutes does not apply to her. This court agrees with the lower court that Smalls is in fact a tenant. Smalls indicated in her first, handwritten answer that she is a tenant and also stated in paragraph five of her second answer that she and Joseph entered into an oral agreement for the rental of the unit. Further, it is uncontested that Smalls obtained permission to enter the rental unit from her mother, a tenant, and gained entry to the premises through a key provided by Joseph, the landlord. Contrary to Smalls' argument, she was not a squatter or trespasser. Thus, this court disagrees with Smalls and upholds the lower court's finding that she was a tenant subject to an action for possession under Chapter 83, Florida Statutes.

This court also disagrees with Smalls as to the main issue presented in this case. Contrary to Smalls' argument, tenants are precluded from raising the defense of improper notice of termination when they fail to deposit rent into the court registry as ordered. This holding is not novel. In *Christenson v. Chandler*,[1] a tenant raised the defense that the landlord's notice of termination was defective. The tenant was ordered to deposit rent into the court registry but failed to do so. The court held that the defense of improper notice of termination was waived when the tenant failed to deposit rent.[2] Similarly, in *Johnson v. McGee*,[3] the court held that the tenant's failure to deposit rent left the trial court with no choice but to grant the landlord possession of the premises despite the landlord's defective notice.

Applying the *Christenson* and *McGee* holdings to the instant case, Smalls is not entitled to reversal. She failed to deposit the requisite rent into the registry and by doing so, waived any defenses stemming from deficiencies in Joseph's notice. The court twice ordered Smalls to deposit rent funds into the court registry -- and she even affirmatively acknowledged that she had the capacity to do so. Her failure to deposit the funds on both occasions was in direct contravention of the trial court's order and her conduct obviated that court's original finding in her favor.

As a result of this court's decision, Joseph qualifies under Fla. Stat. §83.48 and Fla. R. App. P. 9.400 as a prevailing party entitled to attorney's fees and costs. Thus, this court not only affirms the lower court's default final judgment in favor of Joseph but also remands the case to the lower court for a determination of reasonable fees and costs.

AFFIRMED and REMANDED. (GLAZER, and LEYTE-VIDAL, JJ., concur.)

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[1]8 Fla. L. Weekly Supp. 468c (Fla. 17th Jud. Cir. 2001).

[2]*See id.*

[3]6 Fla. L. Weekly Supp. 585a (Fla. 9th Jud. Cir. 1999).

* * *

Positive
As of: Jan 30, 2013

ROBERT FOX, Appellant, v. THE STATE OF FLORIDA, Appellee

Case No. 90-2455

Court of Appeal of Florida, Third District

580 So. 2d 313*; *1991 Fla. App. LEXIS 4777*; *16 Fla. L. Weekly D 1446

May 28, 1991, Filed

SUBSEQUENT HISTORY: [**1] Released for Publication June 13, 1991. Petition for Review Denied October 25, 1991, Reported at *1991 Fla. LEXIS 1880.*

PRIOR HISTORY: An Appeal from the Circuit Court for Dade County, Martin D. Kahn, Judge.

DISPOSITION: Affirmed.

COUNSEL: Bennett H. Brummer, Public Defender, and Elliot H. Scherker, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Angelica D. Zayas, Assistant Attorney General, for appellee.

JUDGES: Hubbart, Baskin and Cope, JJ.

OPINION BY: PER CURIAM

OPINION

[*313] Robert Fox appeals his convictions for possession of cocaine and trespass after warning. We affirm.

Officer Edwin Gonzalez is a member of a crime suppression team which patrols the public housing project involved in this case, the Modello Housing Project, as well as other sites, in order to control crime and narcotics problems in those locations. The Modello Housing Project is posted with "no trespassing" signs on all of the buildings. On January 4 officer Gonzalez observed defendant on the premises, ascertained that he had no reason to be there, and advised him either to leave the project or be arrested for trespassing. Defendant departed.

The next afternoon at 4 p.m., the same officer again observed defendant on the grounds of the Modello Project. He again ascertained that [**2] defendant had no reason to be there and again warned him to leave. At 9 p.m. the same day, the officer again observed defendant at the Modello Project. At that time he arrested defendant for trespass after warning. In a search incident to the arrest, the officer found cocaine on defendant's person. Defendant was tried and convicted for possession of cocaine and trespass after warning.

Defendant's principal contention on this appeal is that the officer did not have the authority to warn him to leave the premises, and therefore could not arrest him for trespass after warning. We disagree.

The trespass statute creates a misdemeanor penalty "if the offender defies an order to leave, personally communicated to him by the owner of the premises *or by an authorized person . . . .*" *ß 810.09(2)(b), Fla. Stat.* (1989)(emphasis added). In the present case the Modello Project is a publicly owned housing project managed by a Dade County employee.

[*314] "On public premises, authorized personnel includes those persons who have been given either express or implied authority from the chief executive." *State v. Dye, 346 So.2d 538, 542 (Fla. 1977).* Under *Dye*, public employees who [**3] have been designated "to exercise control over [public] property constitute the class of 'other authorized persons' under the statute." *Id.* The project manager in the present case is clearly such a person.

At trial both the project manager and the arresting officer testified about the relationship between the Modello Project and the police department with respect to efforts to control crime and the sale of drugs. The project manager certainly has the authority to enlist the assistance of the police. No particular form of words is needed in order to confer on the police the authority to

warn trespassers to leave the premises, nor was it necessary under the statute that the manager's authorization to the police be given in writing. We conclude that there was sufficient evidence on which the trier of fact could find, beyond a reasonable doubt, that the police had been given the authorization to warn trespassers to leave the premises.

Affirmed.

MICHAEL DOREEN BAKER, Appellant, v. STATE OF FLORIDA, Appellee.

CASE NO. 4D01-1691

COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

813 So. 2d 1044; 2002 Fla. App. LEXIS 4960; 27 Fla. L. Weekly D 900

April 17, 2002, Opinion Filed

SUBSEQUENT HISTORY: [**1] Released for Publication May 3, 2002.

PRIOR HISTORY: Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert R. Makemson, Judge; L.T. Case No. 00-2907 CFA.

DISPOSITION: Reversed the trial court's ruling and remanded with instructions to vacate the conviction.

COUNSEL: Carey Haughwout, Public Defender, and James W. McIntire, Assistant Public Defender, West Palm Beach, for appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Marrett W. Hanna, Assistant Attorney General, West Palm Beach, for appellee.

JUDGES: FARMER, J. KLEIN and MAY, JJ., concur.

OPINION BY: FARMER

OPINION

[*1045] FARMER, J.

The defendant pled no contest to the crimes of possession of cannabis less than 20 grams and possession of cocaine, reserving his right to appeal the trial court's ruling on his motion to suppress, which the state admits is dispositive to its case. We reverse the trial court's ruling and remand with instructions to vacate the conviction.

Officer Savickus noticed the defendant standing with another male in the front yard of a residential duplex, street number 602. The officer did not recognize the defendant as "somebody who hangs in this area." The [**2] owner of the duplex, also the owner of the two neighboring duplexes, street numbers 604 and 606, had authorized the police to arrest trespassers and had posted a "no trespassing" sign on the lawn of the middle duplex, unit 604. As Savickus drove his police car by, the defendant and the other male "seemed nervous," broke apart, and walked away. When Savickus approached the defendant, who had now left the property, and asked what he had been doing on the property, the defendant explained that he had stopped on the property to fix the button of his pants. Defendant stated that neither he nor the other male lived in the duplex residence and he did not know the people who lived at the property. With this information, Savickus arrested the defendant for trespassing. Savickus found cocaine and marijuana in the defendant's pocket. The trial court denied the defendant's motion to suppress, ruling that there was probable cause to arrest the defendant for trespassing and, thus, the search incident to the arrest legal.

The trespass statute provides,

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure [**3] or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

ß 810.09, Fla. Stat. (2000). The state did not present evidence proving that officer Savickus had probable

cause to believe the defendant was committing a trespass pursuant to (1)(a)1. because there was no evidence that the defendant received an actual communication to not enter or remain on the property. Savickus admitted he had never given the defendant a trespass warning before. The residence was also not posted, fenced, or cultivated land as defined by section 810.011. [1] *See, e.g., Smith v. State, 778 So. 2d 329, 330 (Fla. 2d DCA 2000)* (holding that convenience store was not "posted land" as defined by statute because "no trespassing" sign was attached to building rather [**4] than being posted along the lot's boundaries); *In the Interest of B.P., 610 So. 2d 625, 626 (Fla.* [*1046] *1st DCA 1993)*(holding that state did not prove that land was "posted land" as it presented no proof that owner's name appeared on "no trespassing" sign).

1 The State presented no evidence that the duplexes were "enclosed by a fence of substantial construction." Neither was the land "cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation." Lastly, the land was not "posted land" because "no trespassing" signs were not placed at each corner of the boundary of the land, along the boundary line, and in a manner and in such position as to be clearly noticeable from outside the boundary line.

The state also did not satisfy (1)(a)2. Viewing the evidence of this case in a light most favorable to sustaining the trial court's ruling, *see Wilson v. State, 734 So. 2d 1107, 1109* (Fla. 4th DCA), [**5] *review denied, 749 So. 2d 504 (Fla. 1999)*, a reasonable officer could not have believed, based on the totality of the circumstances, that an offense, other than trespass, was being committed simply by the defendant standing with another male in the front yard of the residential duplex. The state concedes as such in its brief. When Savickus drove the police car by, the defendant and the male "seemed nervous," broke apart, and walked away, but "flight alone will not provide probable cause." *State v. Cote, 547 So. 2d 993, 994 n.1 (Fla. 4th DCA 1989)*; *see also Blanding v. State, 446 So. 2d 1135, 1137 (Fla. 3d DCA 1984)*(explaining that the flight of a person from the presence of police is not standing alone sufficient to establish probable cause, but if there already exists a significant degree of suspicion concerning a particular person, the flight of that individual upon the approach of the police may be taken into account and may well elevate the preexisting suspicion up to the requisite Fourth Amendment level of probable cause). Thus, as the defendant's conduct did not give rise to probable cause to arrest him for trespassing, the drugs [**6] found, incident to the unlawful arrest, should have been suppressed. *See Wright v. State, 792 So. 2d 1264, 1266 (Fla. 4th DCA 2001)*; *see also Slydell v. State, 792 So. 2d 667, 670-71 (Fla. 4th DCA 2001)*(holding that officer did not have well-founded suspicion that defendant was committing a trespass to justify stopping and detaining him simply because officer did not recognize defendant, the landlord had given the police authority to issue trespass warnings, and the defendant upon seeing the officer turned to walk the other way).

KLEIN and MAY, JJ., concur.

743 So. 2d 603; 1999 Fla. App. LEXIS 13471, *;
24 Fla. L. Weekly D 2345

CURTIS FREEMAN, Appellant, v. STATE OF FLORIDA, Appellee.

CASE NO. 98-4040

COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

743 So. 2d 603; 1999 Fla. App. LEXIS 13471; 24 Fla. L. Weekly D 2345

October 13, 1999, Opinion Filed

SUBSEQUENT HISTORY: [*1] Released for Publication October 29, 1999.

PRIOR HISTORY: Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Royce Agner, Judge; L.T. Case No. 98-2283 CF10A.

DISPOSITION: Reversed.

COUNSEL: Richard L. Jorandby, Public Defender, and Louis G. Carres, Assistant Public Defender, West Palm Beach, for appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Sarah B. Mayer, Assistant Attorney General, West Palm Beach, for appellee.

JUDGES: WARNER, C.J., STONE and STEVENSON, JJ., concur.

OPINION

PER CURIAM.

Curtis Freeman, the appellant, was convicted, following a jury trial, of possession of cocaine (count I) and trespass in a structure or conveyance (count II). On appeal, Freeman contends, and the State concedes, that the trial court erred in denying his motion for judgment of acquittal with respect to the trespass charge.

In the instant case, it was undisputed that Freeman and others were standing in front of an abandoned apartment building. Thus, Freeman's conduct can be characterized as trespass in a structure or conveyance only if the area surrounding the building is considered "curtilage."

See ßß 810.011(1), [*2] *810.08(1), Fla. Stat.* (1997). The Florida Supreme Court has held, in the context of the burglary statute, that in order for an area surrounding a residence to be curtilage, "some form of an enclosure" is required. *State v. Hamilton, 660 So. 2d 1038, 1044 (Fla. 1995).* This enclosure requirement has since been extended to the trespass statute. *See L.K.B. v. State, 677 So. 2d 925 (Fla. 5th DCA 1996).* Here, the State failed to present evidence that the area in front of the abandoned apartment building was enclosed in any manner.

Accordingly, we reverse Freeman's conviction for violation of *section 810.08(1),* trespass in a structure or conveyance. We note, however, that contrary to the suggestions contained in the initial brief, our reversal of Freeman's conviction does not equate to a finding that his arrest (and the subsequent search) was unlawful.

WARNER, C.J., STONE and STEVENSON, JJ., concur.

S.N.J., Appellant, v. STATE OF FLORIDA, Appellee. S.F., Appellant, v. STATE OF FLORIDA, Appellee.

Case No. 2D08-3672, Case No. 2D08-3673 CONSOLIDATED

COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

17 So. 3d 1258; 2009 Fla. App. LEXIS 13787; 34 Fla. L. Weekly D 1910

September 18, 2009, Opinion Filed

SUBSEQUENT HISTORY: Released for Publication October 6, 2009.

PRIOR HISTORY: [**1]
Appeal from the Circuit Court for Hillsborough County; Michelle Sisco, Judge.

COUNSEL: James Marion Moorman, Public Defender, and Matthew D. Bernstein, Assistant Public Defender, Bartow, for Appellants.

Bill McCollum, Attorney General, Tallahassee, and Katherine Coombs Cline, Assistant Attorney General, Tampa, for Appellee.

JUDGES: LaROSE, Judge. VILLANTI and WALLACE, JJ., Concur.

OPINION BY: LaROSE

OPINION

[*1259] LaROSE, Judge.

S.N.J. and S.F. appeal their adjudications and dispositions for resisting an officer without violence. Because the trial court should have granted their motions for judgment of dismissal, we reverse.

A private security guard saw S.N.J., S.F., and two companions in the parking lot of an apartment complex. Apartment leases contained a no-loitering policy; the complex, however, had no posted no-loitering or no-trespassing signs. Upon questioning, the juveniles refused to give their names and addresses to the guard. He escorted one off the property and called the police to issue trespass warnings to the others. The juveniles were engaged in no criminal or otherwise suspicious activities. When a police officer arrived, one juvenile stated that he lived in the complex; the officer escorted him home. The officer returned [**2] and repeatedly asked S.N.J. and S.F. for their names and addresses, intending only to issue a trespass warning. In rather vulgar terms, S.N.J. and S.F. refused. The officer arrested them.

Section 843.02, Florida Statutes (2007), states in relevant part:

> Whoever shall resist, obstruct, or oppose any officer . . . in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree.

To secure a conviction, the State must show that: (1) the officer was engaged in the lawful execution of a legal duty and (2) the defendant's action constituted obstruction or resistance of the lawful duty. *Slydell v. State, 792 So. 2d 667, 671 (Fla. 4th DCA 2001).*

The trial court ruled that the officer was engaged in the lawful execution of a legal duty when he attempted to issue a trespass warning. The officer claimed to have been unable to issue the warnings without names. Thus, S.N.J.'s and S.F.'s refusal to identify themselves constituted an obstruction of the officer's duty. We review the denial of motions for judgment of dismissal de novo. *See G.T.J. v. State, 994 So. 2d 1182 (Fla. 2d DCA 2008).*

Section 810.09(1)(a)(1), Florida Statutes [**3] (2007), requires that notice be given before a person can be guilty of trespassing on property other than a structure or conveyance. S.N.J. and S.F. could be legally detained for trespassing only if they were first warned to leave the

property. *See In the Interest of B.M., 553 So. 2d 714, 716 n.2 (Fla. 4th DCA 1989)* (explaining that the crime of trespass on unposted land does not occur until after trespasser is warned to depart and fails to do so). *Section 810.09(2)(b)* provides that any person authorized by the property owner may give the requisite warning. When attempting to issue a trespass warning to S.N.J. and S.F., the officer acted as the property owner's agent, not in an official capacity. *See Rodriguez v. State, No. 2D07-5992, 34 Fla. L. Weekly D1673, 2009 Fla. App. LEXIS 11580 (Fla. 2d DCA Aug. 19, 2009)* (holding that property owners and lessees can give officers authority to issue such warnings); *J.M.C. v. State, 962 So. 2d 960, 962 (Fla. 4th DCA 2007)* (Klein, J., concurring specially) (stating that property owner had a right to ask defendant to leave his property, the defendant had the right as well as the duty to do so, and the officer's agreement to convey the trespass warning did not convert it [**4] into a legal duty); *B.M., 553 So. 2d at 715* (holding that officer is authorized by the property owner to issue trespass warnings).

[*1260] The officer could have asked the juveniles to leave the property, thereby giving them a warning under the statute, without knowing their names. *See Slydell, 792 So. 2d at 673* (holding that until the officer had a reasonable suspicion of trespassing, defendant could refuse to give his name). He did not; thus, neither S.N.J. nor S.F. was guilty of trespassing under *section 810.09(1)(a)(1)*, and no sufficient cause existed to detain them. *See Slydell, 792 So. 2d at 671* ("A mere 'hunch' that criminal activity may be occurring is not sufficient" for an investigatory stop.).

That the apartment complex had a no-loitering policy in its leases does not validate S.N.J.'s and S.F.'s detention. *See id. at 672* (holding an officer's bare suspicion that a person is trespassing insufficient for an investigatory stop and detention, even when coupled with an agreement between the property owner and the police for officers to stop and investigate unfamiliar persons); *B.M., 553 So. 2d at 715* (holding that police authority absent posted trespass warning "was limited to conveying [**5] an order to depart the premises"). The record does not indicate that the juveniles knew of the policy. At most, the officer's encounter with S.N.J. and S.F. was consensual. *See Popple v. State, 626 So. 2d 185, 186 (Fla. 1993).*

An individual may refuse to identify herself to a police officer when she has not been lawfully detained. *See A.F. v. State, 912 So. 2d 374, 376 (Fla. 2d DCA 2005); Fournier v. State, 731 So. 2d 75, 76-77 (Fla. 2d DCA 1999); Burkes v. State, 719 So. 2d 29, 30 (Fla. 2d DCA 1998).* Further, to support a conviction under *section 843.02*, "with limited exceptions, physical conduct must accompany offensive words." *Francis v. State, 736 So. 2d 97, 99 (Fla. 4th DCA 1999)* (footnote omitted). Words alone rarely, if ever, amount to an obstruction. *See D.A.W. v. State, 945 So. 2d 624, 626 (Fla. 2d DCA 2006); Francis, 736 So. 2d at 99; D.G. v. State, 661 So. 2d 75, 76 (Fla. 2d DCA 1995).*

The officer was merely acting as an agent of the property owner to issue a trespass warning. Until the officer asked S.N.J and S.F. to leave and they refused, they were entitled to refuse to identify themselves.

Accordingly, we reverse the adjudications and dispositions. Our resolution moots [**6] the juveniles' issues concerning the imposition of costs.

Reversed.

VILLANTI and WALLACE, JJ., Concur.

Item number: 9

April 10, 2009

With Advocates' Help, Squatters Call Foreclosures Home

By JOHN LELAND

MIAMI — When the woman who calls herself Queen Omega moved into a three-bedroom house here last December, she introduced herself to the neighbors, signed contracts for electricity and water and ordered an Internet connection.

What she did not tell anyone was that she had no legal right to be in the home.

Ms. Omega, 48, is one of the beneficiaries of the foreclosure crisis. Through a small advocacy group of local volunteers called Take Back the Land, she moved from a friend's couch into a newly empty house that sold just a few years ago for more than $400,000.

Michael Stoops, executive director of the National Coalition for the Homeless, said about a dozen advocacy groups around the country were actively moving homeless people into vacant homes — some working in secret, others, like Take Back the Land, operating openly.

In addition to squatting, some advocacy groups have organized civil disobedience actions in which borrowers or renters refuse to leave homes after foreclosure.

The groups say that they have sometimes received support from neighbors and that beleaguered police departments have not aggressively gone after squatters.

"We're seeing sheriffs' departments who are reluctant to move fast on foreclosures or evictions," said Bill Faith, director of the Coalition on Homelessness and Housing in Ohio, which is not engaged in squatting. "They're up to their eyeballs in this stuff. Everyone's overwhelmed."

On a recent afternoon, Ms. Omega sat on the tiled floor of her unfurnished living room and described plans to use the space to tie-dye clothing and sell it on the Internet, hoping to save some money before she is inevitably forced to leave.

"It's a beautiful castle, and it's temporary for me," she said, "and if I can be here 24 hours, I'm thankful." In the meantime, she said, she has instructed her adult son not to make noise, to be a good neighbor.

In Minnesota, a group called the Poor People's Economic Human Rights Campaign recently moved families into 13 empty homes; in Philadelphia, the Kensington Welfare Rights Union maintains seven "human rights houses" shared by 13 families. Cheri Honkala, who is the national organizer for the Minnesota group and was homeless herself once, likened the group's work to "a modern-day underground railroad," and said squatters could last up to a year in a house before eviction.

Other groups, including Women in Transition in Louisville, Ky., are looking for properties to occupy, especially as they become frustrated with the lack of affordable housing and the oversupply of empty homes.

Anita Beaty, executive director of the Metro Atlanta Task Force for the Homeless, said her group had been looking into asking banks to give it abandoned buildings to renovate and occupy legally. Ms. Honkala, who was a squatter in the 1980s, said the biggest difference now was that the neighbors were often more supportive. "People who used to say, 'That's breaking the law,' now that they're living on a block with three or four empty houses, they're very interested in helping out, bringing over mattresses or food for the families," she said.

Ben Burton, executive director of the Miami Coalition for the Homeless, said squatting was still relatively rare in the city.

But Take Back the Land has had to compete with less organized squatters, said Max Rameau, the group's director.

"We had a move-in that we were going to do one day at noon," he said. "At 10 o'clock in the morning, I went over to the house just to make sure everything was O.K., and squatters took over our squat. Then we went to another place nearby, and squatters were in that place also."

Mr. Rameau said his group differed from ad hoc squatters by operating openly, screening potential residents for mental illness and drug addiction, and requiring that they earn "sweat equity" by cleaning or doing repairs around the house and that they keep up with the utility bills.

"We change the locks," he said. "We pull up with a truck and move in through the front door. The families get a key to the front door." Most of the houses are in poor neighborhoods, where the neighbors are less likely to object.

Kelly Penton, director of communications for the City of Miami, said police officers needed a signed affidavit from a property's owner — usually a bank — to evict squatters. Representatives from the city's homeless assistance program then help the squatters find shelter.

To find properties, Mr. Rameau and his colleagues check foreclosure listings, then scout out the houses for damage. On a recent afternoon, Mr. Rameau walked around to the unlocked metal gate of an abandoned bungalow in the Liberty City neighborhood.

"Let the record reflect that there was no lock on the door," Mr. Rameau said. "I'm not breaking in."

Inside, the wiring and sinks had been stripped out, and there was a pile of ashes on the linoleum floor where someone had burned a telephone book — probably during a cold spell the previous week, Mr. Rameau said.

"Two or three weeks ago, this house was in good condition," Mr. Rameau said. "Now we wouldn't move a family in here."

So far the group has moved 10 families into empty houses, and Mr. Rameau said the group could not afford to help any more people. "It costs us $200 per move-in," he said.

Mary Trody hopes not to leave again. On Feb. 20, Ms. Trody and her family of 12 — including her mother, siblings and children — were evicted from their modest blue house northwest of the city, which the family had lived in for 22 years, because her mother had not paid the mortgage.

After a weekend of sleeping in a paneled truck, however, the family, with the help of Take Back the Land, moved back in.

"This home is what you call a real home," Ms. Trody said. "We had all family events — Christmas parties, deaths, funerals, weddings — all in this house."

On a splendid Florida afternoon, Ms. Trody's dog played in the water from a hose on the front lawn. The house had mattresses on the floors, but most belongings were in storage, in case they had to leave again.

"I don't think it's fair living in a house and not paying," Ms. Trody said.

She said the mortgage lender had offered the family $1,500 to leave but was unwilling to negotiate minimal payments that would allow them to stay. She said she and her husband had been looking for work since he lost his delivery job with The Miami Herald.

In the meantime, she said, "I still got knots in my stomach, because I don't know when they're going to come yank it back from me, when they're going to put me back on the streets."

The block was dotted with foreclosed homes.

Three of her neighbors said they knew she was squatting and supported her. One is Joanna Jean Pierre, 32, who affectionately refers to Ms. Trody as Momma.

Ms. Pierre said Ms. Trody was a good neighbor and should be let alone. "That's her house," Ms. Pierre said. "She should be here."

Ms. Trody said that living here before, "I felt secure; I felt this is my home."

"This is where I know I'm safe," she added. "Now it's like, this is a stranger. What's going to happen?"

Even without furniture or homey touches, she talked about the house as if it were a member of her family.

"I know it's not permanently, but we still have these couple days left," she said. "It's like a person that you're losing, and you know you still have a few more days with them."

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Squatters say foreclosed homes beat homeless shelters

They may lack heat and a consistent water supply, but the vacant dwellings aren't as 'depressing,' as one New York mother puts it. Advocates say the number of squatters nationwide is rising.

December 21, 2011 | By Tina Susman, Los Angeles Times

Reporting from New York — Slips of paper are pasted to the broken door of the corner row house, violations for the garbage piled near the front steps. The stench of trash wafts up the dark interior stairway, where an ashtray filled with cigarette butts sits like an abandoned potted plant on the second-floor landing.

Nobody lives here, at least not officially.

But as you climb the narrow stairs to the top floor, a door opens into an airy apartment that is home to Tasha Glasgow, who is part of a largely invisible population of squatters occupying vacant homes across America. Given their clandestine lives, it's impossible to say how many people are squatting in this country, but with more than 1.3 million homes in foreclosure and hundreds of thousands of people homeless, advocates say it's safe to assume the number is growing.

"You have these abandoned dwellings that are sitting there vacant, sometimes for many months," said Patrick Markee of the Coalition for the Homeless in New York, where shelters are reporting record numbers of residents. "It's not an issue of whether squatting is right or wrong. The fact is that people are desperate for places to live, and they're going to do what they need to do."

New York would seem to offer an ideal setting for squatters, with its ubiquitous apartment blocs providing safe hiding for people who can't afford the sky-high rents or stomach life in the shelters. The cutoff of funding this year for a program called Advantage, which helped needy renters pay for housing, has deepened the dilemma for people like Glasgow, 30, who has two children, one of them autistic.

Her 9-year-old girl and 5-year-old boy have been taught to adapt to the idiosyncrasies of life in a squat, which is a bit like life during wartime.

There is no heat. Empty jugs sit on the kitchen counter, waiting to be filled when the water comes on. Toilet-flushing and bathing are timed according to the faucets' erratic flow. Bare bulbs jut from ceiling fixtures, the wood floors are bare of carpeting, and tattered drapes cover the windows. There are none of the signs of regular family life: no dishes in the sink from the last meal, no dining table, no mail to be opened.

Still, it's better than a shelter. "I didn't want to be in a shelter. It was depressing. I wasn't getting support trying to find a place to live," said Glasgow, who has occupied this apartment near the ocean, on the foggy tip of Queens, on and off since 2007.

Glasgow probably is not who most people have in mind when they envision squatters. With her shy smile, cropped curly hair, youthful face and earnest demeanor, she seems more like a grad student than a struggling mother.

At first, she was in this apartment legally, her rent covered mostly by the Advantage program. When the building's owner stopped paying the mortgage a couple of years ago, she had to leave and ended up in a shelter with the children. Glasgow's hopes of getting another apartment with city help faded after Advantage was canceled. She heard that her old apartment was empty, so she moved back in earlier this year.

If all goes well, Glasgow and the children soon will move to another, better squat — a vacant Brooklyn house. The children's father, Alfredo Carrasquillo, entered it Dec. 6 as part of a nationwide effort by homeless advocates to highlight the housing crisis, which included public occupations of bank-owned properties. He won't move the rest of the family in until he has made it more suitable for habitation.

"Honestly, we just thought it would be a great opportunity," Carrasquillo said of taking over the vacant house in a public manner, which included a march through the neighborhood and a party on the quiet street, complete with balloons and housewarming gifts. "This is for everyone who doesn't have a house right now — to show people they can fight back."

There's no guarantee Carrasquillo will be able to remain in the house long enough to fix it up for Glasgow and their kids. But if the cases of squatters elsewhere are any indication, it won't be easy dislodging Glasgow or Carrasquillo now that advocacy groups — galvanized by the momentum created by Occupy Wall Street — have gained confidence in their battles with the banks.

"I wouldn't say it's the new normal yet, but I think it's coming close to that," activist Ryan Acuff said of people occupying vacant homes, or refusing eviction orders from their own homes. Acuff is a leader in Take Back the Land-Rochester, part of a nationwide network of activists. Its goal, Acuff said, is to publicize the housing crisis through confrontational tactics such as the occupation — or "liberation" — of foreclosed houses. He said officials have been reluctant to move against squatters when the spotlight is on them.

Realtors contracted to sell foreclosed homes sometimes offer cash to squatters to get rid of them quietly. Glasgow said she'd heard a rumor that someone might offer her $2,000 to leave the Queens apartment.

Bank of America said it had no immediate plan to move against Carrasquillo, even though he is openly squatting in the Brooklyn house. "The foreclosure has not been completed so we are not in a legal position to take any action," spokeswoman Jumana Bauwens said of the house.

She added that it was the bank's policy "to protect and secure our properties for the investors who own them" and that foreclosure "is always our last resort."

In the case of Catherine Lennon, in Rochester, N.Y., Bank of America backed off amid a high-profile foreclosure effort. Lennon, 50, was evicted from her home in March after Bank of America accused her of defaulting on her mortgage — something Lennon denies. Take Back the Land-Rochester moved her back into the empty house in May, staging protests and news conferences on the front lawn that seemed to discourage another eviction. Lennon remains in the house.

"It's not a mansion, but it's mine," Lennon said of the sparsely furnished gray house, where she and her late husband were married in 2008, shortly before he died of cancer.

In Chicago, activists moved Martha Biggs into a foreclosed property in June. The mother of four had been living in a minivan with her children.

"There's always a way around something," said Biggs, who helped activists renovate the house to make it comfortable. "My goal was to get my kids to a better place, just to call home, so we don't have to keep running from place to place."

For now, at least, both women seem safe in their homes, which is all Carrasquillo and Glasgow said they want.

"I'm just trying to find a place for my family," said Carrasquillo, adding that the Brooklyn house makes perfect sense. "It's a building and nobody's there, and we're homeless."

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Guilty verdict in 'adverse possession' case

by JIM DOUGLAS

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WFAA

Posted on November 14, 2012 at 4:08 PM

Updated Wednesday, Nov 14 at 8:10 PM

FORT WORTH — David Cooper, the man who claimed a law dating back to the 1800s gave him legal permission to occupy a home that was not his, has been found guilty of burglary and theft in a Tarrant County courtroom. His wife was found not guilty.

A jury returned the verdicts around 5 p.m. Wednesday in the county's first "squatter" trial involving a claim of adverse possession.

Prosecutors argued that jurors should not have been asked to consider the

intricacies of the 1800s Texas law on adverse possession. They said it was a matter of law that adverse possession did not apply to what 26-year-old Cooper did.

But Judge Sharen Wilson ruled that adverse possession *was* at issue, and it seemed to give Cooper an opening.

His attorney told jurors the state did not prove Cooper intended to commit a crime when he moved into a $400,000 home on Forestwood Drive in north Arlington.

News 8 found him living there openly last November. He had posted "No Trespassing" signs, filed an affidavit with the county clerk, and turned on utilities.

The house had been vacant for several months while the owners were out of town for medical treatment.

Cooper testified it was open, abandoned, overgrown and trashed out when he discovered it. He said he researched adverse possession law on the Internet before moving in.

In closing statements, prosecutor David Lobingier called Cooper and his wife Jasmine Williams "opportunists," "thieves" and "looters."

It took jurors about two hours to find Cooper guilty of burglary of a habitation and theft over $200,000. They found Williams not guilty.

<> Punishment testimony begins Thursday. Potential penalties range from probation all the way to life in prison.

David Cooper does not have an extensive criminal history, and will be eligible for probation.

This is the first of about a half-dozen trials focused on adverse possession. Prosecutors say Wednesday's decision could affect the others.

Questions arose about the legal definition of a habitation. "Burglary of a habitation" carries stiffer penalties than "burglary of a building."

Tarrant County district attorney Joe Shannon stepped in last year to stop a wave of adverse possession filings affecting millions of dollars in property.

Several "squatter" families were evicted and charged after moving into empty

homes, and claiming legal protection ownership under the law of adverse possession.

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LAW

Cheap Digs: Squatter Claims Ownership of $2.5 Million Florida Mansion

By Charlie Campbell | Jan. 28, 2013 | 36 Comments

A $2.5 million South Florida mansion has been taken over by a crafty squatter and the police are powerless to order an eviction.

The 7,500 square-foot residence in Boca Raton, Fla., is currently being inhabited by Brazilian national André Barbosa. The 23-year-old is using an antiquated legal covenant called "adverse possession" that allows a vacant property's title to be acquired by anyone openly occupying and maintaining the site and paying real estate tax for seven years.

(MORE: Has America Become a Nation of Squatters?)

"Nobody's happy – we all spent a lot of money to live on this street," a neighbor told *ABC News*. "This guy is trying to pull something."

However, Bank of America, which foreclosed on the property at 580 Golden Harbour Drive in July, has now issued a legal challenge to eject Barbosa as well as collect $15,000 in legal fees and compensation.

BILL INGRAM / MCT / ZUMA PRESS

This waterfront home in Boca Raton, Fla., photographed on Jan. 25, 2013, is being occupied by a 23-year-old squatter named Andre Barbosa.

The five-bedroom waterfront home had sat unoccupied for around 18 months before the current "tenant" took possession and filed papers to contend ownership at Florida's Property Appraisers Office. Barbosa, who goes by the nickname "Loki boy," posted a signed copy of his legal claim in the front window of the house, according to the Florida *Sun Sentinel*.

Cases of adverse possession being used by squatters to acquire real estate have spiked since the economic downturn. A total of 38 such claims have been made to the Palm Beach County Property Appraiser over the past three years, reports the Palm Beach *Post*.

However, American judges aren't always sympathetic to adverse possession claimants. David Cooper, 26, was found guilty of burglary and theft in Tarrant County, Texas, in November after he tried to use the law to take ownership of a $400,000 house in North Arlington.

(VIDEO: Slab City, Here We Come: Living Life Off the Grid in California's Badlands)