Trespass, community associations

Number: INFORMAL

Date: July 31, 2007

The Honorable Paige V. Kreegel
Representative, District 72
410 Taylor Street
Punta Gorda, Florida 33950

Dear Representative Kreegel:

You ask this office's opinion regarding the interpretation of section 810.09(3), Florida Statutes.

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 or s. 775.083."

Thus, the statute permits an "authorized person" to "stand in the shoes of" the owner and order a trespasser to leave. In considering the interpretation of the term "authorized person" for purposes of section 810.09, Florida Statutes, the Supreme Court of Florida in *State v. Dye*,[1] 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."

During the 2000 legislative session, section 810.09, Florida Statutes, was amended to provide a statutory definition of the term "authorized person."[2] An examination of the legislative history indicates that the definition was added to address a 1990 opinion of this office that stated there was no authority to pre-authorize on-duty police officers to act as a private landowner's agent in warning individuals to leave the private landowner's property.[3]

During the 2007 legislative session, the definition of "authorized person" as used in section 810.09, Florida Statutes, was again amended.[4] As amended, section 810.09(3) provides:

"As used in this section, the term "authorized person" or "person authorized" means any owner, or 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."

The above italicized language was added during the 2007 session. You ask whether a community association may act on behalf of a private landowner to warn individuals to leave the private landowner's property or to authorize law enforcement to communicate such an order.

While the definition of "authorized person" now clearly includes a community association within its terms, the statute requires that such an association be "authorized as an agent for the owner." Thus, the statute would appear to require some evidence that the association has received authorization from the owner to act on his or her behalf.

I trust that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

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

[2] Section 5, Ch. 2000-369, Laws of Fla., defined the term "authorized person" or "person authorized" to mean "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."

[3] *See* Op. Att'y Gen. Op. 90-08 (1990) (on-duty police officers may not 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 s. 810.09[2][b], F.S., although there may be instances where there is a threat to public safety and welfare and it is in the public's interest to permit a law enforcement officer to order, on behalf of a landowner, an alleged trespasser to leave the property).

[4] House Bill 1185, enacted as Ch. 07-123, Laws of Florida. The act became effective July 1, 2007.