



A T T O R N E Y S

SMITH, RODGERS &
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

Trespass or Eviction? Legal Decision-Making for Officers

By *Kevin Smith*

Discussion

Law enforcement officers frequently have difficulty distinguishing a trespasser who is subject to criminal arrest from a lawful tenant who must be evicted in civil court. That is understandable. The topic can be quite complex, and there are many misconceptions and myths that abound throughout the law enforcement community and court system. For a summary of relevant legal issues, please open the following document:

CLICK HERE FOR... *Trespass or Eviction Memorandum*

What First Line Supervisors Should Know

1. The Memorandum was authored several years ago, and is reproduced here in response to popular demand by officers from around the State. This topic tends to generate a tremendous amount of interest—*after all, it's high-liability, it's legally complex, and it's confronted by officers daily*. First-line supervisors, please feel free to copy the Memo (and this Roll Call Training item) for circulation. [If you have in-house legal counsel, please check with your attorney in advance for approval.]
2. Officers face many legal decision-making difficulties when confronted by these “trespass or eviction” scenarios. Encourage your officers to read the Memo in order to improve general knowledge of eviction law—*and more importantly, to help dispel legal myths and misconceptions that may impair police judgment concerning valid trespass arrest probable cause*.
3. Because of the legal complexity and endless variety of factual situations encountered, officers will not find an “easy answer” to every problem by resort to the Memo. Nevertheless, the legal basics set forth here will provide valuable guidance in most cases.

ROLL CALL TRAINING

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4. At SR&S, we frequently receive the following question from Officers who read this Memo: “Where is the new case (or statute) that says these things—and *will you send us a copy of it?*” The fact is, there is no new case or statute. Rather, the basic principles set forth in the Memo are based upon *centuries (!)* of real estate law pre-dating the Mayflower Compact. In other words, it has never been the case that “just staying in this apartment, and having some clothes in the closet,” creates a landlord-tenant relationship (or any other protected estate in real property). And in the event someone should run into a judge or attorney who expresses uncertainty about any of this, share this edition of Roll Call training, and highlight the following sentence:

[Just for Lawyers] There has never been a present possessory estate known as “Clothes in the Closet Fee Simple,” or “Helped Paint the Kitchen Fee Subject to Condition Subsequent,” or “I Been Staying Here Three Months Already Fee Determinable,” or “Fee Subject to an Executory *This is Where I Grew Up So That Gives Me the Right to Stay Here Forever Fee Tail.*” And for that matter, there has never been a “Got This Address on my I.D. Life Estate,” or a “*What Difference Does it Make That My Name’s Not on the Lease? Lease-Hold.*” [This will make sense to former law students who endured first semester Property courses—trust us. Many of them will walk away from you immediately in search of a bottle of Scotch.]

5. Finally, alert officers to the cautionary notes on p. 5 of the Memo. **Client agencies of SR&S, please contact us 24/7 for real-time guidance whenever we can be of assistance to you. And yes, we will be happy to speak to the Magistrate by phone in support of valid probable cause to arrest.**

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