

Kimball, Tirey & St. John LLP

The Homeless and California Property Owners

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The homeless can create issues for both residential and commercial California property owners. Loitering, camping, trash, the accumulation of personal effects, theft, vandalism, or using property facilities and amenities without authorization are some of the issues facing property owners. When the homeless are mentally ill, and their behavior is illogical, they can be frightening or dangerous to themselves or others. Dealing with the homeless can be challenging.

LEGAL ISSUES

TRESPASS LAWS

Being homeless is not a crime. However, trespassing can create both civil and criminal liability. "Trespass" is the wrongful entry on another's real property. [Penal Code §602](#), sub-section (o) provides the elements of a criminal private property trespass, as follows:

Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall inform the law enforcement agency to which the request was made when the assistance is no longer desired, before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession. However, this subdivision does not apply to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code) or by the federal National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants, as defined in Section 34213.5 of the Health and Safety Code, constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

If the individual refuses to leave after being asked to do so, or returns to the property after being asked to leave, a trespass violation exists. However, if the individual voluntarily complies after the request, a trespass arrest is typically not possible unless other crimes have been committed.

Law enforcement agencies often request a Letter of Agency from property owners. This allows local law enforcement to act as the agent for the owner of private property for the purpose of enforcing laws against any person found on the property without the owner's consent or without lawful purpose. Each city has its own Letter of Agency form (sometimes called a Trespass Letter). Depending on the city, the Letter of Agency must be renewed every 6 months to 1 year. For a copy of this form, and to determine the requirements of your local law enforcement agency, Google the name of your city or local law enforcement agency and "trespass" and "letter of agency" to learn more about this option in your jurisdiction.

In theory, a Letter of Agency sounds like a great tool to combat trespass by the homeless. In practice, due to the volume of calls received by law enforcement, trespass laws enforcement is often low on the priority list. Sometimes hours will pass before law enforcement responds to a call. Property owners should maintain a positive relationship and communication with their local law enforcement office, as this may make responding to your property a higher priority. Often local law enforcement agencies have local neighborhood community offices, and developing a relationship with a local neighborhood community officer can be helpful.

PERT (PSYCHIATRIC EMERGENCY RESPONSE TEAM)

If the homeless person is creating an issue and showing signs of mental illness, creating an immediate threat to themselves or others, local law enforcement may involve a local Psychiatric Emergency Response Team ("PERT"). PERT is a mental health crisis intervention team that pairs a licensed mental health professional with a law enforcement officer or deputy. Under Health and Safety Code §5150:

When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff ... or professional person designated by the county may, upon probably cause, take or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation in a treatment facility ...

If PERT finds that the homeless individual is an immediate danger to themselves or others, then they may be removed from the property and transported to the local County mental health facility for observation.

RESTRAINING ORDERS

A restraining order could potentially be used to prevent a homeless person from entering property. However, a restraining order may not be a practical solution. Obtaining a restraining order can be expensive and time consuming. Ironically, it is not uncommon for a property owner who has obtained a restraining order to have difficulty serving the restraining order on the homeless defendant.

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Additionally, compliance and enforcement of restraining orders can be difficult due to the transient nature and lifestyle of the homeless, particularly when the homeless person is mentally ill.

If you are interested in exploring this option, consult with an attorney. Also see http://clientportal.kts-law.com/resource_library/docs/Articles/Abuse&HarassmentLaws11-22-11.pdf. The California Judicial Branch has a website with more information. Basic information is available at <http://www.courts.ca.gov/1041.htm>.

NON-LEGAL SOLUTIONS

Sometimes the best solutions to homeless trespassing problems are not legal solutions. Think about how the property could be physically changed to make it less attractive to homeless trespassers. Consider:

- installing fences to exclude trespassers (around the perimeter of the property, on the roof, under stairways, or other areas where trespassers may congregate); or
- installing barriers or deterrents, such as fences, plants, rocks, sprinklers, or lights (on a timer or with motion detectors) to prevent loitering and sleeping in areas where the homeless have congregated in the past.

CONCLUSION

There is no simple solution to homeless trespasser issues. However, legal and non-legal tools may reduce homeless trespasser issues.

Questions regarding this topic may be directed to Jamie Sternberg at jamie.sternberg@kts-law.com or (800) 574-5587.

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