TRESPASS
(Violation)
PENAL LAW 140.05
(Committed on or after Sept. 1, 1971)
(Revised January 2013)[1]

The ___ count is Trespass.

Under our law, a person is guilty of Trespass when that person knowingly enters [remains][2] unlawfully in or upon premises.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "premises," "unlawfully," and "knowingly."

PREMISES means any real property [including a building].[3]

[NOTE: Add, where appropriate:
In addition to its ordinary meaning, the term building includes any structure, vehicle or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein, or used as an elementary or secondary school, or an inclosed motor truck, or an inclosed motor truck trailer.[4]]

[NOTE: Add, where appropriate:

---

[1] The January, 2013, revision was for the purpose of expanding the definition of "unlawfully" when the trespass is premised on a violation of an order of protection in order to accord with the dictates of *People v Cajigas*, 19 NY3d 697 (2012).

[2] When the accusation is that the defendant entered lawfully upon the premises but remained unlawfully after license and privilege to be on the premises terminated, substitute the word "remains" for the word "enters" as indicated by the use of brackets. *See People v Gaines*, 74 NY2d 358 (1989).

[3] *See* Penal Law § 140.00(1).

[4] *See* Penal Law § 140.00(2).

Where a building consists of two or more units separately secured or occupied, each unit shall be deemed both a separate building in itself and a part of the main building.[5]]

A person enters [remains] UNLAWFULLY in or upon premises when that person has no license or privilege to enter [remain] in or upon such premises.[6] To have no license or privilege to enter [remain] means to have no right, permission or authority to do so.

[NOTE: Add, where appropriate:

A person who is subject to and knows of an order of protection directing him/her to stay away from premises which he/she knowingly enters, even by invitation or permission, UNLAWFULLY enters those premises.[7]]

[NOTE: Add, where appropriate:

Under our law, a person who enters [remains] upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to such person by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner.[8]]

[NOTE: Add, where appropriate:

A person who, regardless of his or her intent, enters [remains] in or upon premises which are at the time open to the public does so with license and privilege unless he or she defies a lawful order not to enter [remain], personally communicated to

---

[5] *See* Penal Law § 140.00(2).

[6] *See* Penal Law § 140.00(5).

[7] *See* footnote 1.

[8] *See* Penal Law § 140.00(5).

him or her by the owner of such premises or other authorized person.[9]]

[NOTE: Add, where appropriate:

A license or privilege to enter [remain] in a building which is only partly open to the public is not a license or privilege to enter [remain] in that part of the building which is not open to the public.[10]]

A person KNOWINGLY enters [remains] unlawfully in or upon premises when that person is aware that he or she is entering [remaining] in or upon such premises without license or privilege to do so.[11]

In order for you to find the defendant guilty of this offense, the People are required to prove from all the evidence in the case beyond a reasonable doubt both of the following two elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(defendant's name)*, unlawfully entered [remained] in or upon premises located at *(specify)*; and

2. That the defendant did so knowingly.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the offense of Trespass as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those

---

[9] *See* Penal Law § 140.00(5).

[10] *See* Penal Law § 140.00(5).

[11] *See* Penal Law § 15.05(2).

elements, you must find the defendant not guilty of the offense of Trespass as charged in the ___ count.