



# A TRESPASS PRIMER FOR COMMUNITY GROUPS MAINTAINING VACANT PROPERTY

Many communities fight blight by maintaining, beautifying and securing vacant and abandoned structures. When homes are maintained on the exterior, a neighborhood with high vacancy appears more stable. Vacant homes that are maintained are less likely to become targets for dangerous behavior such as loitering, squatting, and drug activity. This maintenance, in turn, can prevent further neighborhood decline.

Volunteers' vacant property maintenance efforts benefit neighborhoods in a clear and vitally important way. However, community groups and residents undertaking these activities must consider and understand the potential legal consequences to maintaining a vacant property without the owner's permission under Michigan law.<sup>1</sup>

## WHAT IS TRESPASS?

When a person "enters," or essentially sets foot on private land without the permission of the owner, the act of "entering the land" is illegal and can be considered trespass. Under Michigan law, trespass can be a criminal charge brought against an alleged trespasser or a civil claim brought by a property owner or tenant in a lawsuit against an alleged trespasser.<sup>2</sup> Therefore, when a volunteer enters the property for the purpose of maintaining the exterior, this act may be considered a trespass by law enforcement or by the owner.

To date, there are no civil or criminal cases in Michigan finding trespass against community groups or residents for the purpose of maintaining vacant properties. Yet it is necessary for volunteers to understand that when they enter the land to conduct clean up and maintenance activities on a vacant property, the potential for trespass liability is clear. Therefore, it is highly recommended that community groups and residents undertaking volunteer maintenance activities on vacant properties consult an expert attorney to discuss the facts and circumstances of specific properties.

## WHAT ARE SOME PROPERTY MAINTENANCE ACTIVITIES WITH LIABILITY FOR TRESPASS?

- Boarding up open and dangerous buildings
- Securing property entrances, windows, and property perimeters
- Planting flowers, trees, shrubs or gardens
- Mowing lawns and trimming trees and shrubs
- Clearing debris, trash, and flyers
- Painting and/or decorating of vacant structures or boards
- Installing decorative or security fencing

<sup>1</sup> *Gelman Sciences, Inc. v. Dow Chemical Co.*, 202 Mich. App. 250, 253; 508 N.W.2d 142 (1993).

<sup>2</sup> *Cubit v. O'Dett*, 51 Mich. 347; 16 N.W. 679 (1883).



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## WHAT IS CRIMINAL TRESPASS?

Under Michigan criminal law, trespass is a criminal charge that can be brought against an individual or group, as defined by 1931 PA 328, MCL 750.552, in the following instances:

- (a) when someone enters the land of another after having been forbidden to enter the land; or
- (b) when someone remains on the land or premises of another after being asked to leave by the owner or occupant or the agent of the owner or occupant.

### Criminal Consequences for Trespass:

A person convicted of criminal trespass is found guilty of a misdemeanor and can be fined up to \$250 and/or sentenced to a jail term of 30 days.<sup>3</sup>

### Criminal Trespass In Practice:

Michigan law requires that a notice or “warning” be given to would-be trespassers before trespass can be charged. In practice this means that a person does not commit trespass until after they have been **told to leave the property or not to enter**.<sup>4</sup> The warning can be given verbally or in writing by the property owner, tenant/occupant or law enforcement official. In Michigan, placing a “No Trespassing” sign on private property may satisfy the notice requirement of the criminal trespass statute, but specific case facts may make the “notice” unreliable or insufficient.

In general, it is difficult to predict whether law enforcement or a negligent property owner might press charges for trespass. In cases where volunteers acting in good faith improve conditions on a vacant property, it is unlikely (but still possible) that trespass charges would be pursued against the volunteers conducting these activities even though both law enforcement and the property owner have an interest in seeing problem conditions alleviated. Still, the unique facts of the case and the judge’s disposition affect each case differently.

## WHAT IS CIVIL TRESPASS?

Under Michigan civil law, a property owner may bring a claim of trespass against a person who intentionally enters the private property of another without permission.<sup>5</sup> A volunteer entering a property for the purpose of maintaining the exterior may be considered a trespasser by the owner. It is difficult to determine whether a negligent property owner would be likely to press charges in cases where volunteers acting in good faith improve conditions outside a vacant property, because it is clear that the property owner would have an interest in seeing the conditions improved. Yet even when community groups or residents inform the owner that maintenance activities are planned for a specific property, this notice to the owner may not necessarily protect the organization or its volunteers from liability for trespass.

### Civil Consequences for Trespass:

When a property owner brings a suit for trespass against an alleged trespasser, he or she must

<sup>3</sup> MCL 750.552

<sup>4</sup> *Id.*

<sup>5</sup> *Cubit v. O’Dett, supra.*



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show that the trespass caused real physical damage to the land or to a structure on that land to win. If the property owner is successful, the court will award him or her money **damages**.<sup>6</sup> A court can award either nominal damages or actual damages for trespass. The person suing for trespass may also ask the court for an injunction to prevent further trespass.

A judge can award **nominal damages** for any trespass.<sup>7</sup> This type of award is typically very small and allows the court to show that the trespass occurred but was not significant. Some courts award nominal damages as small as \$1.00.

A judge can award **actual damages** for any physical damage to the property if the damage is significant. The amount is determined by calculating the difference between the land's value before and after the trespass.<sup>8</sup> Where a trespasser improves the exterior of a vacant property there would be no actual or monetary damage to the property; in fact, the property value may actually increase rather than lose value through a volunteer's ongoing maintenance activities. Therefore, is unlikely that actual damages would be awarded by a court.

**Injunction against trespass.** A plaintiff may ask the court for an injunction, which is an order against the trespasser to stop any ongoing or future trespass to land.<sup>9</sup> In practice, if a property owner were to win an injunction against a community group preventing trespass to the land, the group would be prevented from entering the property for any reason, including completion of maintenance activities.

<sup>6</sup> *Schankin v. Buskrik*, 354 Mich. 490, 494; 93 N.W.2d 293 (1958).

<sup>7</sup> *Adams v. Cleveland-Cliffs Iron Co.*, 237 Mich. App. 51, 67; 602 N.W.2d 215 (1999).

<sup>8</sup> *Schankin v. Buskrik*, *supra*.

<sup>9</sup> MCL 600.2919



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## DEFENSES TO CIVIL TRESPASS

In the instance that a community group or resident faces a civil suit alleging trespass for the purpose of maintenance, a variety of defenses to the lawsuit are available. Whether or not they apply depends on the facts of the case.

DEFENSE	LEGAL CONCEPT	REQUIREMENTS/ISSUE TO CONSIDER
<p><b>Statute of limitations</b></p> <p>When the law sets a time limit for a plaintiff to claim an injury has occurred or that that his or her rights have been violated, this limit is called a <b>statute of limitations</b>.</p>	<p>Under Michigan law, the statute of limitations for a civil trespass lawsuit is three (3) years.</p>	<p>To sue under civil trespass, a property owner must file a civil suit claiming trespass within three (3) years of the date the trespass occurred or the suit cannot move forward.<sup>10</sup></p>
<p><b>Plaintiff has no title or right to land or improper title to land</b></p> <p>When a person owns a property, they have a legal right to occupy it, lease it, sell it, and exclude others from using it. This right is called title. A tenant’s right to the property is derived from the property owner’s title.</p>	<p>When a trespasser enters private land, they violate the owner’s right to occupy the property and to exclude others from using it.</p>	<p>To sue under civil trespass, the person bringing the complaint must:</p> <ul style="list-style-type: none"> <li>- own the property</li> <li>- rent or lease the property from the owner OR</li> <li>- have a valid claim to the property.</li> </ul> <p>If the person suing for trespass is not the owner and does not have title, he does not have the right to exclude trespassers from the property. A person who does not have these rights cannot sue for trespass, because their rights have not been violated.</p>

<sup>10</sup> MCL 600.5805.



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DEFENSE	LEGAL CONCEPT	REQUIREMENTS/ISSUE TO CONSIDER
<p><b>Consent Given by Owner</b></p> <p>When a property owner gives permission to an individual or group to enter property or to remain, this permission is called <b>consent</b>.</p>	<p>If the person bringing a claim of trespass gave <b>consent</b> to enter the property, then the entry was legal<sup>11</sup> and there was no trespass.</p>	<p>Consent to enter a property can be given by the property owner or tenant when:</p> <ul style="list-style-type: none"> <li>- the owner or tenant gives specific verbal or written permission to enter the property or remain there</li> <li>- the owner or tenant is made aware of the trespass and either fails to object or is silent</li> <li>- the owner or tenant agrees to a contract that allows entry.</li> </ul> <p><b>Example:</b> A property owner or tenant is out of town for the weekend and allows a friend to use the home while away.</p> <p><b>To consider:</b> If a property owner is given “notice” of a possible trespass, silence or inaction is only interpreted as consent when the court finds that a “reasonable” person would have responded or acted similarly in the same circumstances.</p> <p><i>*There are no cases under Michigan law establishing <b>consent</b> as a reliable defense to trespass to maintain vacant property.</i></p>

<sup>11</sup> Weisswasser v. Chernick, 68 Mich. App. 342, 345; 242 N.W.2d 576 (1976); 1 Restatement Torts 2d, § 167.



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DEFENSE	LEGAL CONCEPT	REQUIREMENTS/ISSUE TO CONSIDER
<p><b>Necessity – Public</b></p> <p>Under the legal concept of <b>public necessity</b>, responsibility for an illegal act can be excused if the action was necessary to protect the public from danger or from an emergency situation. Public necessity does not apply if the person’s actions were unreasonable under the circumstances.</p>	<p>In a temporary and dangerous situation, protecting the public from harm is more important than the property owner’s right to exclude trespassers from land.</p> <p>Therefore, when a trespasser enters a property to protect the larger community, the trespass may be excused by <b>public necessity</b>.</p>	<p>Trespass under <b>public necessity</b> requires that:</p> <ul style="list-style-type: none"> <li>- the trespass is an immediate necessity</li> <li>- the trespass is conducted in good faith and for the common good</li> <li>- community interests are involved and at risk</li> </ul> <p><b>Examples:</b> Fire, noxious fumes, natural disaster</p> <p><b>To consider:</b> Whether public necessity applies as a defense to trespass will depend on the circumstances of the case. For example, it is likely that public necessity would be a stronger defense to excuse the trespass of volunteers boarding up entrances to open and dangerous vacant buildings than to excuse the trespass of volunteers mowing high grass on vacant lots.</p> <p><i>*There are no cases under Michigan law establishing public necessity as a reliable defense to trespass to maintain vacant property.</i></p>



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<p><b>Necessity – Private</b></p> <p>Under the doctrine of <b>private necessity</b>, a defendant's illegal act may be excused if it was necessary to protect the actor or his or her property from danger in a temporary, emergency situation.</p>	<p>The <b>private necessity</b> defense asserts that in a temporary, emergency situation, protecting the trespasser from harm may be more important than the property owner's right to exclude trespassers from the property.</p> <p>Therefore, when an alleged trespasser enters a property to protect himself or herself or his or her property from harm, the trespass may be excused by the doctrine of private necessity.</p>	<p>Trespass under <b>private necessity</b> requires that:</p> <ul style="list-style-type: none"> <li>- the trespass is an immediate necessity</li> <li>- the trespass is immediate and necessary to prevent harm to the trespasser or destruction of the trespasser's property.</li> </ul> <p><b>Example:</b> A boat is caught in a severe storm and the captain must dock immediately to prevent harm to himself and destruction of the boat. If the captain docks on a stranger's private pier during the storm, the captain is committing trespass. In this situation, the trespass would be excused, but the captain would have to pay for any damage to the pier caused by the boat.</p> <p><b>To consider:</b> Under private necessity, the trespasser must compensate the owner for any damages to property caused by the trespass.</p> <p><i>*There are no cases under Michigan law establishing private necessity to trespass to maintain vacant property.</i></p>



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<p><b>Unreasonable delay</b> in asserting legal rights (laches)</p> <p>When there is an extended period of time between the injury to the plaintiff and the plaintiff's decision to file a lawsuit, a court may find that the length of the delay is a defense against the claim.</p> <p><b>Laches</b> is the legal term used to describe an instance when the plaintiff unreasonably delays asserting any legal rights when this delay harms the defendant (by influencing decision making or financial investment.)</p>	<p><b>Unreasonable delay</b> describes a situation where the property owner or tenant was aware of the trespass and did not respond or act to prevent it. This lack of response or communication may serve as a defense against a trespass claim if the trespasser relied on the lack of response as a form of giving permission to trespass.<sup>12</sup></p>	<p>In practice, a vacant property owner must respond to prevent trespass on land within a timely manner to support a viable claim of trespass. A community group may be able to defend against a claim of trespass for maintenance activities using <b>unreasonable delay</b> when:</p> <ul style="list-style-type: none"> <li>- facts show that the group relied on the inaction of the property owner and consequently invested resources in the property (e.g. maintenance)<sup>13</sup></li> <li>- facts show that the public interest is a factor in the dispute (e.g. property was below basic maintenance or a nuisance)<sup>14</sup></li> </ul> <p><b>Example:</b> A city builds a road across private land by expanding the route to a local lake. The owner of the private land does not object before or during construction but claims the use of the land was illegal after construction is completed. The city raises the defense of laches or unreasonable delay. The city argues that (a) the owner took an unreasonable amount of time to assert her legal rights to prevent use of her land and (b) the city relied upon her inaction to invest in the road's construction.</p> <p><i>*There are no cases under Michigan law establishing <b>laches</b> as a reliable defense to trespass to maintain vacant property.</i></p>

12 *Kipp v. State Highway Commissioner*, 286 Mich. 202, 210; 281 N.W. 592, 596 (1938).

13 *Great Lakes Gas Transmission Co. v. MacDonald*, 193 Mich. App. 571, 578; 485 N.W.2d 129 (1992).

14 *Vanstock v. Township of Bangor*, 61 Mich. App. 289, 298; 232 N.W.2d 387 (1975).





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## LIMITING LIABILITY FOR TRESPASS

### Contacting the Property Owner

The first step in any action to address blight on a vacant property is to identify and contact the property owner. The property owner is legally responsible for the condition of the property and must keep it up to local municipal code, whether vacant or occupied. This includes a duty to neighbors and community members to conduct basic maintenance at a level preventing disrepair and deterioration into nuisance conditions.

It is important to identify the owner and contact him or her directly where properties:

- have fallen into disrepair
- have conditions that create a security concern
- require exterior maintenance

### Sending a Notice Letter to the Property Owner

Community groups may send a “notice letter” to the negligent property owner to inform him or her that the property needs maintenance and that conditions are being reported to local authorities. This initial contact provides notice to the property owner of community standards for property maintenance and can help to negate potential future legal liability. Ideally, the property owner will respond by quickly taking action to repair unacceptable conditions or the community group may work out a cooperative agreement to maintain the property at the property owner’s expense.

In practice, even after receiving contact by community groups, some vacant property owners are negligent in their duties and allow their properties to remain blighted. Where negligent owners are unresponsive, volunteers’ vacant property maintenance efforts clearly benefit neighborhoods and are vitally important. However, community groups and residents must proceed with care, seeking the support of local government and law enforcement to address problem properties when possible, and refraining from taking action where appropriate.

### Working with Local Government and Law Enforcement

In recent years, local and state governments have boosted efforts to fight blight by enhancing code enforcement initiatives and legal action against nuisance property owners. Volunteers are advised to work with local government and law enforcement to coordinate and support any anti-blight efforts already in progress.

In sum, community groups and residents conducting maintenance activities on vacant properties must consider and understand the potential legal consequences of conducting maintenance activities on private land without permission. **These legal consequences include potential liability for criminal and civil trespass.** It is highly recommended that community groups and residents undertaking maintenance activities on vacant properties discuss the facts and circumstances of specific properties with an expert attorney prior to beginning any initiative.

For more information on this topic, please contact the Michigan Vacant Property Campaign at [www.michiganvacantproperty.org](http://www.michiganvacantproperty.org) or Michigan Community Resources at [www.mi-community.org](http://www.mi-community.org).