

	<b>ELGIN POLICE DEPARTMENT</b> 151 Douglas Avenue Elgin, Illinois 60120	
<b>Effective Date:</b> 01/01/03	<b>STANDARD OPERATING PROCEDURE</b>	<b>Revised Date:</b> 02/09/07
<b>Chief of Police:</b> 	Trespass Agreements, 109.1	
<b>Cross Reference:</b>	<b>Policy Sections:</b> 109.1.1 Property Owner Responsibilities 109.1.2 Officer Responsibilities 109.1.3 Records 109.1.4 Renewal	

## **PURPOSE**

The purpose of this policy is to establish guidelines for “criminal trespass agreements” between property owners (or their authorized agents, such as property managers) and the city.

Illinois courts have established that a peace officer may not arrest a tenant for criminal trespass to land at the landlord’s request when the tenant is in the premises he or she is renting or in any of the building’s common areas. The landlord must file an eviction lawsuit to remove the tenant from the landlord’s property.

As an outgrowth of that principle, the courts have also adopted the Invited Guest Rule. That rule prohibits a police officer from arresting a person for criminal trespass to land at the landlord’s request when that person is on leased premises at the invitation of tenant.

The Illinois Supreme Court made an exception to the general rule of law regarding the invited guests of tenants when it ruled that a written lease authorizing the landlord to ban tenants’ guests from the rental property negates the criminal trespass to land Invited Guest Rule.

The court delineated the specific conditions that must be present to uphold its exception to the criminal trespass Invited Guest Rule. When each of the criteria for upholding such agreements is satisfied, a peace officer can lawfully file complaints based upon a criminal trespass agreement executed with the landlord.

An effective and efficient response to criminal trespass to property violations occurring on residential property requires that the police have the cooperation of the off-site property owner, and in many instances, the on-site residents as well, before an arrest can be effected and a complaint filed with the court.

## **POLICY STATEMENT**

It is the policy of the Elgin Police Department to consider utilizing “criminal trespass agreements” to assist property owners (typically those owning multi-family dwellings) in maintaining order on their properties. These agreements permit a police officer to arrest a person, including a tenant’s guest, for criminal trespass to real property without the landlord being present on the property to observe the trespass. Before an officer can make any such arrest, both the landlord and the police department must satisfy the prerequisites for these arrests established by the Illinois Supreme Court. These written agreements will also specify the property owners’ understanding of their responsibilities to appear in court as necessary to support the officer’s arrest.

## **PROCEDURES**

### **109.1.1 PROPERTY OWNER RESPONSIBILITIES**

A property owner (or his or her authorized agent) seeking to enter into a criminal trespass agreement shall:

- A. Complete a "Criminal Trespass Agreement" provided by the city. That form shall reflect the property owner's full understanding of his or her intent to authorize members of the Elgin Police Department to act on his or her behalf as specified in the agreement.
- B. Submit a completed unsigned cooperative agreement form through the sergeant for the Resident Officer Program of Elgin (ROPE) for approval by the Chief of Police. The agreement will be signed by the property owner following approval by the Chief of Police.
- C. Allow an officer to review lease agreements to confirm that they contain the following provision (the language may be included as a rider to a standard form lease):

BARRED: The landlord or his/her agent has the right to bar individuals from the property. You must inform your guest, they may be barred and / or arrested for criminal trespassing. If the rules and regulation are broken by a resident, it is grounds for immediate termination of tenancy.
- D. Allow the officer to review leases to confirm that it contains rules and regulations governing the conduct of the tenants and guests. These rules must be conspicuously posted in the common areas of the building. Such rules and regulations, minimally, should prohibit tenants and guests from:
  - 1. Damaging, destroying or defacing property belonging to the landlord, employees or any residents.
  - 2. Consuming alcoholic beverages in the common areas.
  - 3. Engaging in any activity involving firearms, illegal drugs or violence.
  - 4. Engaging in any other activity constituting a criminal offense.
  - 5. Violating the City of Elgin curfew ordinance.
  - 6. Making disturbing and unreasonable noise.
  - 7. Interfering with any right, comfort or convenience of any resident of the premises, any employee or the landlord.
  - 8. Engaging in any gang-related activity, including congregating to intimidate tenants, employees or rival gangs
- E. Establish a "Barred / Banned" list. Any person placed on the "Barred/Banned" list shall receive written notice of this determination from the property owner or agent.
  - 1. Barred/Banned notices must state that effective immediately, the recipient is prohibited from entering the apartment complex, including the common areas and parking lots, and that he or she will be subject to arrest for trespass if found on the premises.
  - 2. Officers may offer recommendations to the property owner regarding individuals that should be placed on the barred lists. Officers may also serve the barred notices to persons who are placed on the list. A copy of the Barred/Banned shall be provided to and maintained at Elgin Police Department.
  - 3. When a person is served with a barred notice but is not placed on the "No Trespass" list (see paragraph F), the property owner is required call the police to arrest that person when he or she is found on the premises.
  - 4. Officers do not have the authority to arrest a person whose name solely appeared on the barred list without first receiving specific direction to arrest from the property owner or management.

- F. Establish a "No Trespass" list. After an individual has received a barred notice, the landlord must then decide whether that person's name should be placed on a second list referred to as the "no trespass" list.
- G. Only those individuals (1) whose names were placed on the property owner's barred list, (2) that received a barred notice from the property owner, and (3) whose names were placed on the property owner's no trespass list can be subject to immediate arrest for criminal trespass to land should the police officer observe any such individual on the premises.
- H. The Illinois Supreme Court emphasized that the property owner, alone, must have complete and total discretion as to whether a person should be placed on the "no trespass" list.
- I. When a person is served with a barred notice but is not placed on the "no trespass" list, the property owner is required call the police to cause the arrest of the person that was found on the premises.
- J. Notify the ROPE sergeant PROMPTLY with updated information should information contained on the criminal trespass agreement change.
- K. The criminal trespass agreement shall be signed by the property owner or manager and approved by the Chief of Police.
- L. Attend all court hearings and provide testimony regarding the "Barred and /or No Trespass" lists. Failure to attend a hearing may be grounds for removal from the program.

#### **109.1.2 OFFICER RESPONSIBILITIES**

- A. Before any officer effects an arrest for the commission of "Criminal Trespass to Real Property" on behalf of any property owner on private residential property covered by a criminal trespass agreement, the officer shall verify with the Emergency Communications Center that a criminal trespass agreement is on file and has not expired. The officer shall also ensure that the arrest conforms to existing ordinance and/or statues regulating the offense of "Criminal Trespass to Real Property."
- B. The officer shall verify that the property, as noted in the criminal trespass agreement, has been properly posted with visible rules and regulations and "No Trespassing" signs.
- C. Prior to effecting an arrest, an officer shall:
  - 1. Determine the identity of the specific offender(s).
  - 2. Determine what, if any, relationship the alleged offender has with the property (i.e., tenant, tenant's guest, etc.).
  - 3. Confirm that the alleged offender has been previously warned, by written notice, to cease committing such acts, including entering the premises, and that such written notice has been properly documented to support immediate the actions.
- D. The officer, after determining that all information is correct, shall effect the arrest for "Criminal Trespass to Real Property." The subject shall be transported to the Elgin Police Department for booking and processing.
- E. The officer shall notify the owner /manager of the arrest and convey information regarding the basic circumstances for the arrest. Information pertaining to the court dates and location shall also be conveyed to the owner.

### **109.1.3 RECORDS**

- A. The ROPE Sergeant shall be responsible for administering the Criminal Trespass Agreement Program including the trespass and barred lists.
- B. All executed criminal trespass agreements shall be maintained on file at the following locations for ready reference:
  - 1. Elgin Emergency Communication Center.
  - 2. ROPE Sergeant Office.

### **109.1.4 RENEWAL**

- A. All criminal trespass agreements shall be renewable and bear an expiration date on their face.
- B. Agreements shall be executed on a one year basis. It shall be the responsibility of the ROPE sergeant or designee to maintain an owner/agent roster and to routinely review said roster for expiration and to confer with appropriate property owners/managers as to their desire to renew the agreement prior to expiration.
- C. Should a property owner wish to renew the agreement, the ROPE Sergeant shall meet with him or her to update the agreement document and submit it to the Chief of Police for approval.
- D. Once approved, the ROPE sergeant shall be responsible for having the document properly signed, notarized and distributed to the appropriate personnel for filing.