

## 24VAC30-17-10. Definitions

"Trespassing" means an act of unwanted or **unlawful** entry upon the property of another.

### § 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

**O'Banion v. Com.**, 531 S.E.2d 599 Va.App.,2000

One who enters or stays upon another's land **under a bona fide claim of right cannot be convicted of trespass**; a "bona fide claim of right" is a sincere, although perhaps mistaken, good faith belief that one has some legal right to be on the property; the claim need not be one of title or ownership, but it must rise to the level of authorization. Code 1950, § 18.2-119.

**O'Banion v. Com.**, 519 S.E.2d 817 Va.App.,1999

The statutory offense of criminal trespass **requires a willful trespass**; thus, one who enters or stays upon another's land under a bona fide claim of right cannot be convicted of trespass. Code 1950, § 18.2-119.

**O'Banion v. Com.**, 519 S.E.2d 817 Va.App.,1999

A "bona fide claim of right," which may serve as a defense to a trespass charge, is **a sincere, although perhaps mistaken, good faith belief that one has some legal right to be on the property**; the claim need not be one of title or ownership, but it must rise to the level of authorization.

**Reed v. Com.**, 366 S.E.2d 274 Va.App.,1988

"Bona fide claim of right," as defense in criminal trespass prosecution, is sincere, although perhaps mistaken, good-faith belief that one has some legal right to be on property; **claim need not be one of title or ownership**, but it must rise to level of authorization. Code 1950, § 18.2-119.

**Reed v. Com.**, 6 Va. App. 65, 71, 366 S.E.2d 274, 278 <http://www.courts.state.va.us/opinions/opncavtx/0480983.txt>

"Moreover, a good faith **claim of right to be on the premises negates the requisite intent to engage in a criminal trespass.**" *Id.* **Criminal intent is an essential element** of the statutory offense of trespass, even though the statute is silent as to intent, and if the act prohibited is committed in good faith under claim of right ... although the accused is mistaken as to his right, **unless it is committed with force ... no conviction will lie.**

**Wise v. Com.**, 36 S.E. 479 Va.,1900

Where defendant was accused of unlawfully tearing down the fence of the prosecutor, to refuse an **instruction** that if the defendant tore down the fence under a claim of right, believing it to be his own, then the **jury** should find for the defendant was erroneous.

**Dye v. Com.**, 48 Va. 662 Va.Gen.Ct.,1851

The act of February 14, 1823, in regard to malicious trespasses, was intended to apply to acts of trespass done without any color of title or claim of bona fide title. Where there is a bona fide claim of right, the trespass is not punishable under that statute as a misdemeanor.