



ALAN WILSON
ATTORNEY GENERAL

December 19, 2025

The Honorable Dennis D. Kelly, Sheriff
Greenwood County
528 Edgefield Street
Greenwood, SC 29464

Dear Sheriff Kelly:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You ask whether it is proper for law enforcement to issue a trespass notice to a spouse who no longer has use or possession of jointly owned property pursuant to a temporary order from a Family Court. You suggest that law enforcement should not issue a trespass notice until the issuance of a final order from the Family Court. Further, noting that until the issuance of a final order, any issues regarding alleged use and possession by the excluded spouse may be resolved through the Family Court contempt process.

Law/Analysis

As an initial matter, the scenario you describe—in which one spouse has been granted sole use and possession of jointly owned property under a temporary order of the Family Court and the other spouse attempts to use or possess the property—may be grounds for contempt proceedings in the Family Court. It would appear that by attempting to use or possess the property the excluded spouse is in direct violation of the Family Court's order and is therefore subject to the contempt powers of the Family Court. However, the potential of contempt proceedings does not extinguish the possibility of criminal proceedings against the excluded spouse for trespass.

Section 16-11-620 provides:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

S.C. Code Ann. § 6-11-620 (2015). Notably, Section 6-11-620 provides that “any person” who violates the statute may be convicted. Nothing in Section 6-11-620 prevents an owner from being convicted of trespass. In fact, other statutes specifically contemplate an owner being excluded from their property. *See* South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-530 (1991) (restricting a landlord’s access to property in possession of a tenant); S.C. Code Ann. § 27-40-210(6) (1991) (“ ‘landlord’ means the owner ...”).

The factual scenario you describe is similar to the facts discussed in State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999). In Tyndall, an adult son owned a house in which his father resided.¹ Id. at 14, 518 S.E.2d at 281. Officers attempted to arrest Tyndall for trespass after he refused to leave the house when instructed to do so. Id. at 12-13, 518 S.E.2d at 280. Tyndall appealed claiming that he could not be subject to trespass on property he owned. Id. at 14, 518 S.E.2d at 281. As is explained by the Court of Appeals:

[O]n the date in question, the home was Tyndall’s father’s “dwelling house.” The language of section 16-11-620 does not exclude an owner from the class of persons who may be convicted of trespass after notice. The section provides that “[a]ny person” who violates the statute may be convicted. A record owner’s right to be on the property may be circumscribed if another person peaceably possesses the property. . . . Because Tyndall refused to leave his father’s home after being asked to do so, the police officers acted within the scope of their power when they arrested him without a warrant for trespass after notice.

Id. at 17-18, 518 S.E.2d at 283. Thus, an individual in peaceful possession of a property may exclude even the owner of the property.

In the scenario you describe, each of the spouses has been granted exclusive use and possession of certain properties by the temporary order of the Family Court. This Office is aware of no reason why the temporary nature of that order would undermine the occupying spouse’s ability to exclude “any person,” including their spouse who co-owns the property but has been denied use and possession by the Family Court, from the property under Section 16-11-620.

Finally, we note that Section 16-11-620 also states, “All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.” S.C. Code Ann. § 16-11-620. The General Assembly appears to be expressing a strong policy preference in favor of law enforcement enforcing the rights of individuals to exclude others from property which they peacefully possess.

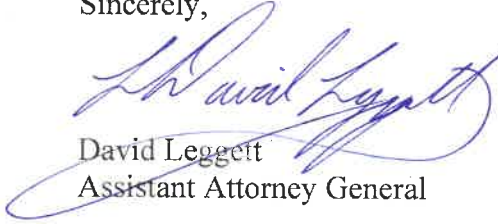
¹ The Court noted that it was not conclusively proven that Tyndall owned the property but a factual determination on this point was irrelevant because the logic allowing owners to be excluded from a property applies, *a fortiori*, to a nonowners. Id. at 17, 518 at 283.

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Conclusion

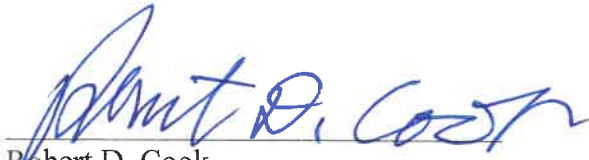
Law enforcement should, at the request of the spouse in possession of a property, issue a trespass notice to a spouse who no longer has use or possession of jointly owned property pursuant to a temporary order from a Family Court. Attempts to use or possess the property by the excluded spouse may also trigger the Family Court contempt process, but the contempt process runs in parallel to potential criminal liability, it does not replace it.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus