

**MISAPPLICATION OF PROPERTY**  
**(A Misdemeanor)**  
**(Encumbering Rented/Bailed Property)**  
**PENAL LAW 165.00(1)(a)**  
**(Committed on or after Nov. 1, 1995)**

The \_\_\_\_\_ count is Misapplication of Property.

Under our law, a person is guilty of Misapplication of Property when, knowingly possessing personal property of another pursuant to an agreement that the property will be returned to the owner at a future time, that person loans [*or leases*] [*or pledges*] [*or pawns*] [*or encumbers*] such property without the consent of the owner in such a manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss.

*[NOTE: Add if the statutory defense is raised:*

It is a defense to this charge that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.]<sup>1</sup>

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: "knowingly," "possess," and "owner."

A person KNOWINGLY possesses personal property of another pursuant to an agreement that the property will be returned to the owner at a future time when that person is aware that he or she possesses the property of another pursuant to such an agreement.<sup>2</sup>

POSSESS means to have physical possession or otherwise

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<sup>1</sup>See Penal Law § 165.00(2).

<sup>2</sup>See Penal Law § 15.05(2).

to exercise dominion and control over tangible property.<sup>3</sup>

An OWNER means a person who has a right to possession of the property which is superior to that of the person who possesses such property by virtue of the agreement.<sup>4</sup>

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name), knowingly possessed personal property of another pursuant to an agreement that the property would be returned to the owner at a future time; and
2. That, without the owner's consent, the defendant knowingly loaned [or leased] [or pledged] [or pawned] [or encumbered] such property and thereby created a risk that the owner would not be able to recover such property [or would suffer a pecuniary loss].

*[NOTE: Add if statutory defense applies:*

and

3. That, at the time the prosecution was commenced, (date commenced), either (a) the defendant had not

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<sup>3</sup>See Penal Law § 10.00(8).

<sup>4</sup>See Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of "owner" to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

recovered possession of the property, unencumbered as a result of the unlawful disposition, or (b) the owner had suffered material economic loss as a result of the unlawful disposition.]

Therefore, if you find that the People have proven beyond a reasonable doubt both [each] of those elements, you must find the defendant guilty of the crime of Misapplication of Property 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 [any one or more] of those elements, you must find the defendant not guilty of the crime of Misapplication of Property as charged in the \_\_\_\_\_ count.