

**CRIMINAL MISCHIEF
THIRD DEGREE
(E Felony)
(Intentionally Damaging Another's Property;
Amount More Than \$250)
PENAL LAW 145.05
(Committed on or after Sept. 1, 1971)
(Revised January 5, 2009)¹
(Revised December 17, 2009)²**

The ___ count is Criminal Mischief in the Third Degree.

Under our law, a person is guilty of Criminal Mischief in the Third Degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, that person damages property of another person in an amount exceeding two hundred fifty dollars (\$250.00).

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: “intent” [and “property of another.”]

INTENT means conscious objective or purpose.³ Thus, a person intends to damage property of another person when his or her conscious objective or purpose is to damage property of another person.

[PROPERTY OF ANOTHER includes all property in which

¹ This charge was revised in January, 2009 to incorporate the legislative enactment of a statutory definition of “property of another” (Penal Law § 145.13).

² This charge was revised in December, 2009 to incorporate the legislative enactment of an amendment to the statutory definition of “property of another” (Penal Law § 145.13; L. 2009, c.45, § 2).

³ See Penal Law § 15.05(1).

another person has an ownership interest, whether or not a person who damages the property, or any other person, may also have an interest in the property.]⁴

The amount of damage to property is determined by the cost of repair or the replacement of the property, whichever is less.⁵

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name), damaged property of another person in an amount exceeding two hundred fifty dollars (\$250);
2. That the defendant did so with the intent to damage property of another person; and
3. That the defendant had no right to cause such damage nor any reasonable ground to believe he/she had such right.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Mischief in the Third Degree as charged in the ___ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those

⁴ Penal Law § 145.13. The modifying word “such” contained in the statute has been replaced here with “the” for clarity.

⁵ See *People v. Woodard*, 148 A.D.2d 997 (4th Dept. 1989); *People v. Gina*, 137 A.D.2d 555 (2nd Dept. 1988); *People v. Simpson*, 132 A.D.2d 894 (3rd Dept. 1987).

elements, you must find the defendant not guilty of the crime of Criminal Mischief in the Third Degree as charged in the __ count.