

**MISAPPLICATION OF PROPERTY
(A Misdemeanor)
(Refusing to Return
Rented Property)
PENAL LAW 165.00(1)(b)
(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 intentionally refuses to return personal property valued in excess of one hundred dollars [\$100] to the owner pursuant to the terms of the rental agreement, provided that the owner made a written demand for the return of such personal property in person [*or* by certified mail at an address indicated in the rental agreement] and the person intentionally refuses to return such personal property for a period of thirty [30] days after such demand has been received [*or* should reasonably have been received] by him or her.

[NOTE: If one or more of the statutory defenses applies, add the appropriate provision(s):

It is a defense to this charge that, at the time the prosecution was commenced, the owner had recovered possession of the personal property and suffered no material economic loss as a result of the unlawful retention.¹

and/or

It is a defense to this charge that, at the time the prosecution was commenced, the defendant was unable to return such personal property because it had been accidentally destroyed or stolen.²

¹ Penal Law § 165.00(3)(a).

² Penal Law § 165.00(3)(b).

and/or

It is a defense to this charge that the owner either (a) failed to conspicuously post a sign in a prominent and visible area in the place of business, measuring at least two (2) feet by four (4) feet, with a writing of at least thirty-six (36) point print stating: **"Rental Information. Warning! Failure to return rented property pursuant to the terms of the rental agreement may subject the renter to criminal prosecution"** or (b) failed to include in the rental contract, in writing of at least twelve (12) point print, the following notice: **"Failure to return rented property under the terms of this agreement may subject the undersigned party(ies) to criminal prosecution."**³

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," "personal property," "owner," "intentionally," "value," "rental agreement," and "written demand."

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.⁴

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.⁵

³ Penal Law § 165.00(3)(c); See General Business Law § 399-w(2).

⁴ See Penal Law § 15.05(2). If necessary, an expanded definition of "knowingly" is available in the section on Instructions of General Applicability under Culpable Mental States.

⁵ Penal Law § 10.00(8). If necessary, an expanded definition of "possession" is available in the section on Instructions of General Applicability under Possession.

PERSONAL PROPERTY includes, but is not limited to, tangible chattels used for personal, household, or business purposes (but shall not include motor vehicles).⁶

An OWNER includes any person, partnership, firm, association, or corporation engaged in the business of renting personal property for profit.⁷

A person acts INTENTIONALLY when that person's conscious objective or purpose is to cause a particular result or to engage in particular conduct. Thus, a person intentionally refuses to return personal property valued in excess of one hundred dollars [\$100] to the owner pursuant to the terms of a rental agreement when his or her conscious objective or purpose is to do so.⁸

VALUE means the market value of the property at the time and place of the crime.⁹

A RENTAL AGREEMENT means the total legal obligation that results from a written rental contract between a person and the owner for the rental of personal property.¹⁰

A WRITTEN DEMAND means a demand which states: (i) the date and time at which the personal property was to have been returned under the rental agreement; (ii) that the owner does not consent to the continued withholding or retaining of such

⁶ Penal Law § 165.00(1)(c) and General Business Law § 399-w(1).

⁷ Penal Law § 165.00(1)(c) and General Business Law § 399-w(1).

⁸ See Penal Law § 15.05(1).

⁹ Penal Law § 155.20(1), which also provides that, if market value "cannot be satisfactorily ascertained," value means "the cost of replacement of the property within a reasonable time after the crime." That definition should be charged if necessary.

¹⁰ Penal Law § 165.00(1)(c) and General Business Law § 399-w(1).

personal property and demands its return; and (iii) that the continued withholding or retaining of the property may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars [\$1,000] or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.¹¹

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, each of the following three [four] [five] [six] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), knowingly possessed personal property of another, having a value in excess of one hundred dollars [\$100], pursuant to a rental agreement which provided that the property would be returned to the owner at a future time;
2. That the owner made a written demand for the return of such personal property, in person [or by certified mail at an address indicated in the rental agreement] and the defendant refused to return such personal property for a period of thirty [30] days after such demand had been received [or should reasonably have been received] by him/her; and
3. That the defendant intentionally refused to return the property.

[NOTE: If one or more of the statutory defenses applies, add as appropriate:

and

4. That, at the time the prosecution was commenced,

¹¹ Penal Law § 165.00(1)(b).

(date commenced), the owner either (a) had not recovered possession of the personal property or (b) had suffered a material economic loss as a result of the unlawful retention.

and/or

4. That, at the time the prosecution was commenced, (date commenced), the defendant was not unable to return such personal property because it had been accidentally destroyed or stolen.

and/or

4. That the owner both (a) conspicuously posted a sign in a prominent and visible area in the place of business, measuring at least two (2) feet by four (4) feet, with a writing of at least thirty-six (36) point print stating: **"Rental Information. Warning! Failure to return rented property pursuant to the terms of the rental agreement may subject the renter to criminal prosecution"** and (b) included in the rental contract, in writing of at least twelve (12) point print, the following notice: **"Failure to return rented property under the terms of this agreement may subject the undersigned party(ies) to criminal prosecution."**

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 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 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.