

FORGERY SECOND DEGREE
(Specific Instrument)
Penal Law § 170.10
(Committed on or After September 1, 1967)¹
(Revised: Jan. 2018, May 2021, May 2022) ²

The (specify) count is Forgery in the Second Degree.

Under our law, a person is guilty of Forgery in the Second Degree when, with intent to defraud, deceive or injure another, he or she falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed (specify appropriate instrument as set forth in Penal Law §170.10 ³).

¹ The definition of “written instrument” was amended by the L. 2021, c. 784 to add the text associated with footnote 8 and that addition applies to an offense committed on or after Dec. 22, 2021.

² The 2018 revision was for the purpose of including the holding in *Golb v. Attorney General*, 870 F3d 89 (2d Cir. 2017), by insertion of the third paragraph, which reads: "An intent to defraud, deceive, or injure another must include an intent to cause harm to that person." See also *People v. Golb*, 23 NY3d 455 (2014).

The 2021 revision was for the purpose of including the definition of “credit card” as amplified by the Court of Appeals. See footnote 2.

The 2022 revision was for the purpose of conforming this instruction to L. 2021, 784, effective December 22, 2021, which amended the definition of “written instrument” to add the text associated with footnote 8.

³The instruments specified in the respective subdivisions of Penal Law §170.10 are:

1. A deed, will, codicil, contract, assignment, commercial instrument, credit card, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status;

(CREDIT CARD means and includes any credit card, credit plate, charge plate, courtesy card, or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit or to purchase or lease property or services on the credit of the issuer or of the holder. (Penal Law § 155.00(7); General Business Law §§ 511.) *Add if in issue:* A credit card also means and includes any number assigned to a credit card. (General Business Law 511-a; *People v Badji*, 36 N.Y.3d 393 [2021]).

or

(continued)

An intent to defraud, deceive, or injure another must include an intent to cause harm to that person.⁴

The following terms used in that definition have a special meaning:⁵

INTENT means conscious objective or purpose.⁶ Thus, a person acts with intent to defraud, deceive, or injure another, when that person's conscious objective or purpose is to do so.

A WRITTEN INSTRUMENT means any instrument or article [including computer data or a computer program] containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.⁷

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2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or
 3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or
 4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value useable in place of money for the purchase of property or services; or
 5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

⁴See *note one*.

⁴ Depending on the evidence, it may not be necessary to define all the methods by which a written instrument may be forged.

⁶See Penal Law §15.05(1)

⁷See Penal Law §170.00(1).

[On or after Dec. 22, 2021, add if applicable: A card provided to a person by a vaccine provider indicating the date a person received a vaccination against COVID-19, the type of vaccine and its lot number, and bearing a government logo or other indication that it is created by a governmental instrumentality, shall be considered a written instrument.⁸]

A written instrument can be either a complete or incomplete.

A complete written instrument means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.⁹

[NOTE: Add where appropriate:

An endorsement, attestation, acknowledgement or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.¹⁰]

An incomplete written instrument means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.¹¹

A person FALSELY MAKES a written instrument when he or she makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he or she did not authorize the

⁸ *Id.* Added by Laws of 2021, c. 784, effective Dec. 22, 2021.

⁹ See Penal Law §170.00(2).

¹⁰ *Id.*

¹¹ See Penal Law §170.00(3).

making or drawing thereof.¹²

A person FALSELY COMPLETES a written instrument when, by adding, inserting or changing matter, he or she transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.¹³

A person FALSELY ALTERS a written instrument when, without the authority of anyone entitled to grant it, he or she changes a written instrument, whether it be in a complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.¹⁴

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 two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), falsely made, completed, or altered a written instrument which was, or purported to be, or which was calculated to become, or to represent if completed (specify appropriate Penal Law §170.10 instrument); and
2. That the defendant did so with the intent

¹²See Penal Law §170.00(4).

¹³See Penal Law §170.00(5).

¹⁴ See Penal Law §170.00(6).

to defraud, deceive or injure another.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.