

SCHEME TO DEFRAUD IN THE FIRST DEGREE
(more than one person, more than one of
whom is a vulnerable elderly person)
Penal Law § 190.65 (1) (c)
(Committed on or after Sept. 19, 2008)

The (specify) count is Scheme to Defraud in the First Degree

Under our law, a person is guilty of a scheme to defraud in the first degree when he or she engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person, more than one of whom is a vulnerable elderly person, or to obtain property from more than one person, more than one of whom is a vulnerable elderly person, by false or fraudulent pretenses, representations or promises, and so obtains property from one or more such persons.

It is necessary for the prosecution to prove the identity of at least one such vulnerable elderly person, but it shall not be necessary to prove the identity of any other intended victim.¹

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

VULNERABLE ELDERLY PERSON means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by demonstrable physical, mental or emotional dysfunction to the extent that the person is incapable of adequately providing for his or her own health or personal care.²

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, when that person's

¹ Penal Law § 190.65 (2).

² Penal Law § 260.30 (3).

conscious objective or purpose is to do so.³

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 four elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), engaged in a scheme constituting a systematic ongoing course of conduct;
2. That the defendant did so with intent to defraud more than one person, more than one of whom is a vulnerable elderly person, namely (specify), or to obtain property from more than one person, more than one of whom is a vulnerable elderly person, namely (specify), by false or fraudulent pretenses, representations or promises;
3. That the defendant so obtained property from one or more such persons.

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

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

³ Penal Law § 15.05 (1)