

MISAPPLICATION OF PROPERTY
(Refusing to Return Rented Property)
Penal Law § 165.00(1)(b)
(Committed on or after Nov. 1, 1995)

The (*specify*) 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

and/or

It is a defense to this charge that the owner either (a) failed

¹ Penal Law § 165.00(3)(a).

² Penal Law § 165.00(3)(b).

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

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

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

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

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.

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

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 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

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).

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, (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.

¹¹ Penal Law § 165.00(1)(b).

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.**"

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.