

FORGERY THIRD DEGREE
PENAL LAW 170.05
(¹Committed on or After September 1, 1967)
Revised: January, 2018¹

The (*specify*) count is Forgery in the Third Degree.

Under our law, a person is guilty of Forgery in the Third Degree when, with the intent to defraud, deceive or injure another he or she falsely makes, completes, or alters a written instrument.

An intent to defraud, deceive, or injure another must include an intent to cause harm to that person.²

The following terms used in that definition have a special meaning:³

INTENT means conscious objective or purpose.⁴ 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

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This instruction was revised to accord with *Golb v. Attorney General*, 870 F.3d 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).

2

See note one.

3

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

4

See Penal Law §15.05(1).

advantage or disadvantage of some person.⁵

A written instrument can be either 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.⁶

[Note: Add where appropriate:

An endorsement, attestation, acknowledgment 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.⁷]

An incomplete written instrument means one which contains some matter by the way of content or authentication but which requires additional matter in order to render it a complete written instrument.⁸

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 making or drawing thereof.⁹

A person FALSELY COMPLETES a written instrument when, by adding, inserting or changing matter, he or she

⁵ See Penal Law §170.00(1).

⁶ See Penal Law §170.00(2).

⁷ Id.

⁸ See Penal Law §170.00(3).

⁹ See Penal Law §170.00(4).

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.¹⁰

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.¹¹

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, both 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; and
2. That the defendant did so with the intent 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.

¹⁰ See Penal Law §170.00(5).

¹¹See Penal Law §170.00(6).