

**CRIMINAL MISCHIEF IN THE THIRD DEGREE**  
**(Intentionally Damaging Another's Property;**  
**Amount More Than \$250)**  
**Penal Law § 145.05(2)**  
**(Committed on or after Sept. 1, 1971)<sup>1</sup>**  
**(Revised Jan. 5, 2009 and Dec. 17, 2009)<sup>2</sup>**

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

Under our law, a person is guilty of Criminal Mischief in the Third Degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, that person damages property of another person in an amount exceeding two hundred fifty dollars (\$250.00).

The following term(s) used in that definition has/have a special meaning:

INTENT means conscious objective or purpose.<sup>3</sup> Thus, a person intends to damage property of another person when his or her conscious objective or purpose is to damage property of another person.

[PROPERTY OF ANOTHER includes all property in which another person has an ownership interest, whether or not a

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<sup>1</sup> Initially, Penal Law § 145.05 defined “criminal mischief in the third degree” as set forth in this charge. Effective November 1, 2003, the instant definition was numbered subdivision two, with no further amendments, to enable the addition of a new subdivision one. L. 2003, c. 276.

<sup>2</sup> The January 2009 revision was for the purpose of incorporating the legislative enactment in 2008 of a statutory definition of “property of another” [Penal Law § 145.13]. L.2008, c. 601, eff. Nov. 1, 2008.

The December 2009 revision was for the purpose of incorporating a 2009 legislative amendment of that statutory definition of “property of another” (Penal Law § 145.13; L. 2009, c.45, eff. May 29, 2009.)

<sup>3</sup> See Penal Law § 15.05(1).

person who damages the property, or any other person, may also have an interest in the property.]<sup>4</sup>

The amount of damage to property is determined by the cost of repair or the replacement of the property, whichever is less.<sup>5</sup>

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 three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), damaged property of another person in an amount exceeding two hundred fifty dollars (\$250);
2. That the defendant did so with the intent to damage property of another person; and
3. That the defendant had no right to cause such damage nor any reasonable ground to believe he/she had such right.

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.

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<sup>4</sup> Penal Law § 145.13. The modifying word “such” contained in the statute has been replaced here with “the” for clarity.

<sup>5</sup> See *People v. Woodard*, 148 A.D.2d 997 (4<sup>th</sup> Dept. 1989); *People v. Gina*, 137 A.D.2d 555 (2<sup>nd</sup> Dept. 1988); *People v. Simpson*, 132 A.D.2d 894 (3<sup>rd</sup> Dept. 1987).