

GRAND LARCENY IN THE THIRD DEGREE
(Deed Theft)
Penal Law § 155.35 (3)
(Committed on or after July 19, 2024)

NOTE: The definition of what constitutes larceny encompasses, and is limited to, the theories of larceny specified in subdivision two of Penal Law § 155.05. People v Foster, 73 NY2d 596 (1989). Those theories of larceny are imbedded in the definition of the term “wrongfully take, obtain, or withhold.” This instruction is limited to the theory of larceny by deed theft. Penal Law § 155.05(2)(g).

The (specify) count is Grand Larceny in the Third Degree.

Under our law, a person is guilty of Grand Larceny in the Third Degree when such person steals property and when such person commits deed theft of one commercial real property, regardless of the value.

A person STEALS PROPERTY and commits larceny when, with the intent to deprive another of property or to appropriate the same to himself or herself [or to a third person], such person wrongfully takes, obtains, or withholds such property from an owner of the property.¹

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

OWNER means a person having a right of possession of the property superior to that of the person who takes, obtains or withholds it.²

¹ See Penal Law § 155.05 (1).

² See Penal Law § 155.00 (5). Also see that section for special definitions of

INTENT means a conscious objective or purpose. Thus, a person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [or to a third person] when such person's conscious objective or purpose is:

(1) to withhold the property or cause it to be withheld permanently,³ or

(2) to exercise control over the property, [or to aid a third person to exercise control over it], permanently,⁴ or

(3) to dispose of the property either for the benefit of himself or herself [or a third person], or, under such circumstances as to render it unlikely that an owner will recover such property.⁵

COMMERCIAL PROPERTY [or any derivative word thereof] means a nonresidential property used for the buying, selling or otherwise providing of goods or services [including hotel services], [or for other lawful business, commercial or manufacturing activities].⁶

“owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

³ In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word “permanently”; namely: “or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person.”

⁴ In the typical larceny, it should not be necessary to include the alternate statutory language which follows the word “permanently”; namely: “or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such person.”

⁵ See Penal Law §§ 15.05 (1); 155.00 (3); 155.03 (4).

⁶ Penal Law § 155.00(12).

A person WRONGFULLY TAKES, OBTAINS, OR WITHHOLDS PROPERTY from an owner when

that person takes property without an owner's consent, and exercises dominion and control over that property for a period of time, however temporary, in a manner wholly inconsistent with the rights of the owner.⁷

A person also wrongfully takes, obtains, or withholds property from an owner, and commits larceny by deed theft, when such person:

Select appropriate alternative(s):

intentionally alters, falsifies, [forges⁸], or misrepresents any written instrument involved in the conveyance or financing of real property, such as a commercial deed or title, with the intent to deceive, defraud, or unlawfully transfer or encumber the ownership rights or a portion thereof of a commercial property; [or]

with intent to defraud, misrepresents themselves as the owner or authorized representative of commercial real property to induce others to rely on such false information in order to obtain ownership or possession of such real property; [or]

with intent to defraud, takes, obtains, or transfers title or

⁷ *People v Hardy*, 26 N.Y.3d 245, 250 (2015); *People v Jennings*, 69 N.Y.2d 103, 118 (1986).

⁸ Forgery of a written instrument is defined to mean “a written instrument which has been falsely made, completed or altered.” Penal Law § 170.00(7). If forgery of the written instrument is a separate charge, a cross-reference to that count may be appropriate.

ownership of real property by fraud, misrepresentation, [forgery, larceny, false pretenses, false promise⁹], or any other fraudulent or deceptive practice.

Under this [last] definition of larceny by deed fraud, it is not necessary that the owner be in fact deprived of title or ownership of the commercial real property permanently or that the property be in fact appropriated permanently. It is sufficient that the actor wrongfully takes, obtains, or transfers title or ownership of real property by the stated fraudulent or deceptive practice for any period of time, however temporary.

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), wrongfully took, obtained, or withheld commercial real property, regardless of its value, from its owner; and
2. That the defendant did so

Select appropriate alternative(s):

by intentionally altering, falsifying, [forging], or misrepresenting any written instrument involved in the conveyance or financing of real property, such as a commercial deed or title, with the intent to deceive, defraud, or unlawfully transfer or encumber the ownership rights or a portion thereof of a commercial property; [or]

with intent to defraud, misrepresenting

⁹ If necessary, definitions of “forgery, larceny. . . false promise” may be found in Penal Law § 170.00(1) [forgery]; § 155.05(1) [larceny]; and § 155.05(2)(d) (first sentence) [false promise]. A definition of “ false pretenses” may be adapted from the definition “Larceny by false pretense” in *CJ12d [NY] Additional Charges in Penal Law article 155*.

themselves as the owner or authorized representative of commercial real property to induce others to rely on such false information in order to obtain ownership or possession of such real property; [or]

with intent to defraud, taking, obtaining, or transferring title or ownership of real property by fraud, misrepresentation, [forgery, larceny, false pretenses, false promise], or any other fraudulent or deceptive practice.

and with the intent to deprive another of the property or to appropriate the property to (himself/herself) [or to a third person].

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.