

GRAND LARCENY IN THE SECOND DEGREE
(Deed Theft)
Penal Law § 155.40 (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 Second Degree.

Under our law, a person is guilty of Grand Larceny in the Second Degree when such person steals property and when such person commits deed theft of:

Select appropriate alternative:

one residential real property

one commercial mixed-use property with at least one residential unit

two or more commercial properties.

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 to possession of

¹ See Penal Law § 155.05 (1).

the property superior to that of the person who takes, obtains or withholds it.²

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

Select appropriate property term:

RESIDENTIAL REAL PROPERTY [or any derivative word thereof] means real property that is used or occupied, or

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

intended to be used or occupied, wholly or partly, as the home or residence of one or more persons,

[including real property that is improved by a one-to-four family dwelling, or a residential unit in a building including units owned as condominiums or on a cooperative basis, used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons],

[but shall not refer to unimproved real property upon which such dwellings are to be constructed].⁶

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.]⁷

MIXED-USE PROPERTY means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.⁸

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

⁶ Penal Law § 155.00(11).

⁷ Penal Law § 155.00(12).

⁸ Penal Law § 155.00(13) cross-referencing to: Real Property Tax Law § 489-aaaa (22).

owner.⁹

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, [forges¹⁰], or misrepresents any written instrument involved in the conveyance or financing of real property, such as a [residential or commercial] deed or title, with the intent to deceive, defraud, or unlawfully transfer or encumber the ownership rights or a portion thereof of a [residential or commercial] property; [or]

with intent to defraud, misrepresents themselves as the owner or authorized representative of [residential or 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 ownership of real property by fraud, misrepresentation, [forgery, larceny, false pretenses, false promise¹¹.], or any other fraudulent or deceptive practice.

⁹ *People v Hardy*, 26 N.Y.3d 245, 250 (2015); *People v Jennings*, 69 N.Y.2d 103, 118 (1986).

¹⁰ 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.

¹¹ 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 *CJI2d [NY] Additional Charges in Penal Law article 155*.

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:

Select appropriate alternative:

one residential real property;
one commercial mixed-use property with at least one residential unit;
two or more commercial properties;

regardless of its value, from its owner; and

2. That the defendant did so

Select appropriate alternative(s):

By intentionally altering, falsifying, [forging¹²], or misrepresenting any written instrument involved in the conveyance or financing of real property, such as a [residential or commercial] deed or title, with

¹² 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.

the intent to deceive, defraud, or unlawfully transfer or encumber the ownership rights or a portion thereof of a [residential or commercial] property; [or]

with intent to defraud, misrepresents themselves as the owner or authorized representative of [residential or 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 ownership of real property by fraud, misrepresentation, [forgery, larceny, false pretenses, false promise¹³.], 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.

¹³ 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 *CJI2d [NY] Additional Charges in Penal Law article 155*.