

EMBEZZLEMENT OF PROPERTY VALUED AT \$100,000 OR MORE BY VIRTUE OF OFFICE OR EMPLOYMENT. G.S. 14-90, 58-2-162, 45A-3. FELONY.

*NOTE WELL: If the value of the property is one hundred thousand dollars (\$100,000) or more, there is a greater punishment. For offenses occurring before December 1, 1997, or if the value is less than one hundred thousand dollars (\$100,000), use N.C.P.I.—Crim. 218.10A.*

The defendant has been charged with embezzlement of \$100,000 or more by virtue of office or employment.<sup>1</sup>

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant [exercised a public trust] [held a public office] [was a [[guardian] [administrator] [executor] [trustee] [receiver] [any other fiduciary, including, but not limited to, a settlement agent] [an [[officer] [agent] of a corporation] [agent] [consignee] [clerk] [bailee] [servant] of any person.]]<sup>2</sup>

Second, that while acting as (*name fiduciary capacity*), (*describe property*<sup>3</sup>) came into the defendant's [possession] [care].

Third, that the defendant [[embezzled]<sup>4</sup> [[fraudulently] [[knowingly and willfully] [misapplied] [converted] to the defendant's own use]] [[took] [made away with] [secreted]

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1. This statute does not apply to persons under 16 years of age. N.C.G.S. 14090(a)(4).

2. If there is some dispute as to whether the defendant was in a particular fiduciary capacity, the nature of that capacity should be explained to the jury. If the defendant is an insurance agent, broker, or administrator refer also to G.S. 58-2-162. *If the defendant is a settlement agent refer to G.S. 45-3.*

3. Property includes any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever that (i) belonging belongs to any other person or corporation, unincorporated association or organization or (ii) are closing funds as defined in G.S. 45A-3.

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(*describe property*) with the intent to [embezzle] [[fraudulently] [knowingly and willfully] [misapply] [convert] (*describe property*) to the defendant's own use].

And Fourth, that the value of the property was \$100,000 or more.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [exercised a public trust] [held a public office] [was a [[guardian] [administrator] [executor] [trustee] [receiver] [any other fiduciary, including, but not limited to, a settlement agent] [an [[officer] [agent] of a corporation] [agent] [consignee] [clerk] [bailee] [servant] of any person]], that while the defendant was acting as (*name fiduciary capacity*), (*describe property*) came into the defendant's [possession] [care], and that the defendant [[embezzled] [[fraudulently] [[knowingly and willfully] [misapplied] [converted] to the defendant's own use]] [[took] [made away with] [secreted] (*describe property*) with the intent to [embezzle] [[fraudulently] [knowingly and willfully] [misapply] [convert] (*describe property*) to the defendant's own use], and that the value of the property was \$100,000 or more, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of embezzlement of \$100,000 or more by virtue of office or employment,<sup>5</sup> but will determine whether the defendant is guilty of embezzlement of less than \$100,000 by virtue of office or employment.

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4. Embezzlement is the fraudulent taking of personal property with which one has been entrusted. Black's Law Dictionary (8th ed. 2004).

5. If there is to be no instruction on lesser included offense, the last phrase should be ". . . it would be your duty to return a verdict of not guilty."

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [exercised a public trust] [held a public office] [was a [[guardian] [administrator] [executor] [trustee] [receiver] [any other fiduciary, including, but not limited to, a settlement agent][an [[officer] [agent] of a corporation] [agent] [consignee] [clerk] [bailee] [servant] of any person]], that while the defendant was acting as (*name fiduciary capacity*), (*describe property*) came into the defendant's [possession] [care], and that the defendant [[embezzled] [[fraudulently] [[knowingly and willfully] [misapplied] [converted] to the defendant's own use]] [[took] [made away with] [secreted] (*describe property*) with the intent to [embezzle] [[fraudulently] [knowingly and willfully] [misapply] [convert] (*describe property*) to the defendant's own use], it would be your duty to return a verdict of guilty of embezzlement. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

