

N.C.P.I.—Civil—805.64A  
DUTY OF OWNER TO TRESPASSER—USE OF REASONABLE FORCE DEFENSE  
GENERAL CIVIL VOLUME  
JUNE 2013  
N.C. Gen. Stat. § 38B-3(1)  
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805.64A DUTY OF OWNER TO TRESPASSER—USE OF REASONABLE FORCE DEFENSE

*NOTE WELL: Use for claims arising on or after 1 October 2011.*

The (*state number*) issue reads:

“Did the defendant use reasonable force to repel the plaintiff who entered the defendant’s [land] [building] with the intent to commit a crime?”

You will answer this issue only if you have answered the (*state number*) issue “Yes” in favor of the plaintiff.<sup>1</sup>

On this issue the burden of proof is on the defendant.<sup>2</sup> This means that the defendant must prove, by the greater weight of the evidence, two things:<sup>3</sup>

First, that the plaintiff entered the [land] [building] of the defendant with the intent to commit a crime.<sup>4</sup> Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such

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1 Give only where the plaintiff was a trespasser (see N.C.P.I.—Civil 805.50) and where the preliminary issue of whether the plaintiff was injured by the defendant’s willful or wanton conduct or the plaintiff’s injury or death was intentionally caused the defendant was answered “Yes” in favor of the plaintiff (see N.C.P.I.—Civil 805.64).

2 Criminal cases discussing self-defense are instructive in this context, except that the burden of proof in a civil case is on the defendant. *See, e.g., Young v. Warren*, 95 N.C. App. 585, 588, 383 S.E.2d 381, 383 (1989); *Harris v. Hodges*, 57 N.C. App. 360, 361, 291 S.E.2d 346, 347, *disc. rev. denied*, 306 N.C. 384, 294 S.E.2d 208 (1982).

3 N.C. Gen. Stat. § 38B-3(1) (2011). Under the Trespasser Responsibility Act: “A possessor [of land] may be subject to liability [to a trespasser] if the trespasser’s bodily injury or death resulted from the possessor’s willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.” N.C. Gen. Stat. § 38B-3(1).

4 N.C. Gen. Stat. § 38B-3(1).

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just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.<sup>5</sup>

The defendant contends and the plaintiff denies that the plaintiff intended to commit the crime of *(name crime and describe its elements)*.

And Second, that the defendant used no more force against the plaintiff than was reasonably necessary under the circumstances to repel the plaintiff from *his* [land] [building].<sup>6</sup>

Finally, as to this issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant used reasonable force to repel the plaintiff who entered the defendant's [land] [building] with the intent to commit a crime, then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

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<sup>5</sup> This definition of "intent" comes from N.C.P.I.—Criminal 120.10. If a further definition of general intent or specific intent is required, you may consider giving the following additional instruction: [Specific intent is a mental purpose, aim or design to accomplish a specific harm or result]. [General intent is a mental purpose, aim or design to perform an act, even though the actor does not necessarily desire the consequences that result]. See Black's Law Dictionary, 881–82 (Bryan A. Garner, 9th ed. 2009).

<sup>6</sup> *State v. McCombs*, 297 N.C. 151, 157, 253 S.E.2d 906, 911(1979); *State v. Lee*, 258 N.C. 44, 46-47, 127 S.E.2d 774, 776-77 (1962). Unless such force was used or threatened as would create a reasonable apprehension of death or great bodily harm, the defendant's use of deadly force would be excessive (*i.e.*, unreasonable) as a matter of law. *State v. Clay*, 297 N.C. 555, 563, 256 S.E.2d 176, 182 (1979), *overruled on other grounds*, *State v. Davis*, 305 N.C. 400, 415, 290 S.E.2d 574, 583 (1982).