

WANTON AND WILLFUL OR FRAUDULENT BURNING OF A DWELLING HOUSE BY THE OWNER OR OCCUPANT. G.S. § 14-65. FELONY.

NOTE WELL: Use this instruction only when (1) the defendant is charged with wantonly and willfully or fraudulently burning a dwelling house, which he exclusively occupies, or (2) wantonly and willfully or fraudulently burning a building which is not inhabited, but is designed or intended as a dwelling house and which is owned by him. Where the defendant is charged with burning a dwelling house that is owned by him but inhabited by another the proper charge may be arson, depending on the language of the indictment.

The defendant has been charged with [wantonly and willfully] [fraudulently] [setting fire to] [burning] [causing the burning of] a [dwelling house] [building designed or intended as a dwelling house].<sup>1</sup>

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

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<sup>1</sup>G.S. § 14-65 also makes it an offense to "aid, counsel or procure" the burning of a dwelling house by the owner or occupant. If the defendant is prosecuted under this statute for "aiding" the burning of property, use the elements of N.C.P.I.--Crim. 202.20 or 202.20A (Aiding and Abetting) and incorporate this instruction as indicated therein. If the defendant is prosecuted under this statute for "counseling" or "procuring" the burning of property, use N.C.P.I.--Crim. 202.30 (Accessory Before the Fact) and incorporate this instruction as indicated (applies to felonies committed before July 1, 1981).

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First, that the defendant intentionally [set fire to<sup>2</sup>]  
[burned] [caused the burning of] a [(describe structure)]  
[building designed or intended for use as a dwelling house].

Second, that this building was <sup>3</sup>[used as a dwelling house  
and occupied<sup>4</sup> by the defendant] (or) [designed or intended for  
use as a dwelling house and owned by the defendant].

And Third, that the defendant did so [wantonly and  
willfully, that is, intentionally and without justification or  
excuse, with the knowledge or reasonable grounds to believe his  
act would endanger the rights or safety of others.<sup>5</sup>] [for the  
fraudulent purpose of obtaining something of value from another

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<sup>2</sup>It is possible for a person to "set fire to" property without burning it. S. v. Hall, 93 N.C. 573 (1885). If there is some question as to whether the defendant "set fire to" the property, the jury may be told that "a person sets fire to property whenever he causes fire to come into contact with the property, even though the property may not in fact be burned, or is merely scorched or discolored by heat." If there is some question as to whether the defendant "burned" the property, the jury may be told that "a partial burning or the slightest charring is sufficient, but a mere scorching or discoloration by heat does not constitute a burning."

<sup>3</sup>Use the first bracketed phrase when the defendant is charged with burning the dwelling house that he occupies. Use the second bracketed phrase when the defendant is charged with burning a building intended for use as a dwelling house and which he owns.

<sup>4</sup>In an appropriate case, add the following when using the first bracketed phrase, "The (describe structure) would be occupied by the defendant if it was used by him as a permanent, temporary, or seasonal residence, even though he was not physically present in the dwelling when it was burned."

<sup>5</sup>See S. v. Brackett, 306 N.C. 138 (1982) for a discussion of the terms willful and wanton as used in this statute. The words have substantially the same meaning.

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by means of an intentional misrepresentation of the truth of the  
burning.]

If you find from the evidence beyond a reasonable doubt that  
on or about the alleged date the defendant intentionally [set  
fire to] [burned] [caused the burning of] a building that [was  
used as a dwelling house and was occupied by the defendant] [was  
designed or intended for use as a dwelling house and was owned by  
the defendant], and that the defendant did so [wantonly and  
willfully] [for a fraudulent purpose], 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, it would be  
your duty to return a verdict of not guilty.

