

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

NOTE WELL: This instruction applies to offenses occurring between December 1, 1997 and November 31, 2009. For offenses occurring on or after December 1, 2009, use N.C.P.I.—Crim 218.15A.

The defendant has been charged with embezzlement of \$100,000 or more, which occurs when a(n) (*name fiduciary capacity*) rightfully receives property in his role as (*name fiduciary capacity*) and then intentionally, fraudulently and dishonestly uses it for some purpose other than that for which he received it.

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

First, that the defendant was a(n) (*name fiduciary capacity*) of the victim.¹

Second, that while acting as the victim's (*name fiduciary capacity*), the defendant rightfully received (*describe property*).

Third, that the defendant intentionally,² fraudulently and dishonestly used (*describe property*) for some purpose other than that for which he received it.

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 rightfully received (*describe property*) as a(n) (*name fiduciary capacity*) of the victim and that he intentionally, fraudulently and dishonestly used that property for some

1. 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.

2. For the definition of intent see N.C.P.I.—Crim. 120.10.

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purpose other than that for which he received it, and that the value of the property was \$100,000 or more, it would be your duty to return a verdict of guilty of embezzlement of \$100,000 or more. 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,³ but will determine whether the defendant is guilty of embezzlement of less than \$100,000.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant rightfully received (*describe property*) as a(n) (*name fiduciary capacity*) of the victim and that he intentionally, fraudulently and dishonestly used that property for some purpose other than that for which he received it, it would be your duty to return a verdict of guilty of embezzlement. However, 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.

3. 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.”