

N.C.P.I.—Crim 308.10

SELF-DEFENSE, RETREAT — INCLUDING HOMICIDE (TO BE USED FOLLOWING THE SELF-DEFENSE INSTRUCTIONS WHERE RETREAT IS IN ISSUE).

REPLACEMENT JUNE 2017

N.C. Gen. Stat. §§ 14-51.2(f), 14-51.3(a)

-----  
308.10 SELF-DEFENSE, RETREAT — INCLUDING HOMICIDE (TO BE USED FOLLOWING THE SELF-DEFENSE INSTRUCTIONS WHERE RETREAT IS IN ISSUE).

*NOTE WELL: This instruction is to be used if the evidence shows that the defendant was at a place where the defendant had a lawful right to be, including the defendant's own home<sup>1</sup> or premises, the defendant's place of residence, the defendant's workplace, or in the defendant's motor vehicle, when the assault on the defendant occurred.*

If the defendant was not the aggressor<sup>2</sup> and the defendant was [in the defendant's own home]<sup>3</sup> [on the defendant's own premises] [in the defendant's place of residence] [at the defendant's workplace] [in the defendant's motor vehicle] [at a place the defendant had a lawful right to be]<sup>4</sup>, the defendant could stand the defendant's ground and repel force with force regardless of the character of the assault being made upon the defendant. However, the defendant would not be excused if the defendant used excessive force.

---

1 "Home" is defined as [a] building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile, or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence. N.C. Gen. Stat. § 14-51.2(a)(1)(2016).

2 See *State v. Holloman*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (June 9, 2017), reversing, \_\_ N.C. App. \_\_, 786 S.E.2d 328 (2016). The Supreme Court in *Holloman* explained that G.S. 14-51.4(2)(a), allowing an aggressor to regain the right to utilize defensive force under certain circumstances, does not apply where the aggressor initially uses deadly force against the person provoked. Accordingly, the trial court did not err by instructing that a defendant who was the aggressor using deadly force had forfeited the right to use deadly force and that a person who displays a firearm to his opponent with the intent to use deadly force against him or her and provokes the use of deadly force in response is an aggressor.

3 See *State v. Pearson*, 288 N.C. 34 (1975); *State v. Kelly*, 24 N.C. App. 673

N.C.P.I.—Crim 308.10

SELF-DEFENSE, RETREAT — INCLUDING HOMICIDE (TO BE USED  
FOLLOWING THE SELF-DEFENSE INSTRUCTIONS WHERE RETREAT IS  
IN ISSUE).

REPLACEMENT JUNE 2017

N.C. Gen. Stat. §§ 14-51.2(f), 14-51.3(a)

-----

---

(1975).

4 See *State v. Lee*, \_\_ N.C. App. \_\_, 789 S.E.2d 679 (Aug 2, 2016) (concluding that, because the defendant was located in the street by his home at the time of the offense, and not within his home or premises, motor vehicle, or workplace, he was not entitled to a “stand your ground” instruction on that basis), *disc. rev. allowed*, 796 S.E.2d 790 (2017).