

## Crim. J.I. 14.5180 Defense of property.

### 14-5180. Defense of property.(fn1)

Statute text

Evidence has been presented that the defendant acted while defending property.

The defendant acted in defense of property if:

1. The \_\_\_\_\_(fn2) was property [of the defendant](fn3) [in the defendant's lawful possession](fn4);

2. It appeared to the defendant that \_\_\_\_\_ (name of victim) was about to \_\_\_\_\_ (describe act) and that it was necessary to \_\_\_\_\_ (describe defendant's action and name victim) in order to stop \_\_\_\_\_ (name of victim);

3. The defendant used an amount of force that the defendant believed was reasonable and necessary to defend the property;

4. A reasonable person in the same circumstances as the defendant would have acted as the defendant did;

[5. The force used by the defendant would not ordinarily create a substantial risk of death or great bodily harm.](fn5)

The burden is on the state to prove beyond a reasonable doubt that the defendant did not act in defense of \_\_\_\_\_(fn2). If you have a reasonable doubt as to whether the defendant acted in defense of property, you must find the defendant not guilty.

#### USE NOTE

1. For use when defense is based on defense of property against either felony act or nonfelony act. UJI 14-5170 is used for justifiable homicide; defense of habitation. UJI 14-5171 (Justifiable homicide; self-defense) is used if unlawful interference with property is accompanied by threat of death or great bodily harm. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not act in defense of property."

2. Describe the property.

3. Use only the applicable bracketed language.

4. If there is a question of fact as to whether the defendant was in lawful possession of the property, an

appropriate instruction must be prepared.

5. Use bracketed material only if the defendant's action resulted in death or great bodily harm. If the bracketed material is used, the definition of "great bodily harm," UJI 14-131, must also be given if not already given.

History

[As amended, effective January 1, 1997.]

Annotations

**Committee commentary.** - In *State v. Couch*, 52 N.M. 127, 137, 193 P.2d 405 (1946), the New Mexico Supreme Court recognized that one cannot defend property, other than his habitation, to the extent of killing an aggressor for the mere purpose of preventing a trespass. See also *Brown v. Martinez*, 68 N.M. 271, 361 P.2d 152 (1961). A person may use reasonable force to protect his property from unlawful interference by another, however, no force is reasonable if a request to cease the unlawful interference would have been sufficient. See LaFave & Scott, Criminal Law 399 (1972).

A deadly force may be used in protection of a person's real or personal property if the interference with the property is accompanied by a deadly force. In such a case, a self-defense instruction must be given.

This instruction adopts the Model Penal Code position which permits the use of force to protect property in the defendant's lawful possession. See LaFave & Scott, supra.

#### COMPILER'S ANNOTATIONS

**The 1997 amendment**, effective January 1, 1997, made gender neutral changes in Paragraphs 1, 2, and 3, rewrote the last paragraph, and added the last sentence in Use Note 1.

**Exercise of legal right, no matter how offensive, is not adequate provocation** to reduce homicide from murder to manslaughter. *State v. Marquez*, 96 N.M. 746, 634 P.2d 1298 (Ct. App. 1981).

**Instruction properly not given.** - An individual may not use force to defend real or personal property where the attempt to dispossess is lawful. *State v. Trammel*, 100 N.M. 479, 672 P.2d 652 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Homicide or assault in defense of habitation or property, 25 A.L.R. 508, 32 A.L.R. 1541, 34 A.L.R. 1488.