

Ala. Code 1975, § 13A-7-6(b)

Burglary Second Degree
(Dwelling - House)

The defendant is charged with burglary in the second degree.

A person commits the crime of burglary in the second degree if he/she unlawfully enters a lawfully occupied dwelling-house with intent to commit a theft or a felony therein.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant entered a lawfully occupied dwelling-house, the property of **[insert name]**, with intent to commit a theft or a felony therein, **[insert crime]**; **(AND)**
- (2) The defendant did so unlawfully.

A person *enters unlawfully* in or upon premises when he/she is not licensed, invited or privileged to do so. A person who, regardless of his/her intent, enters in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of such premises or other authorized person. [13A-7-1(3)]

A *dwelling* is a building which is used or normally used by a person for sleeping, living or lodging therein. [13A-7-1(2)]

[Read as appropriate]: A *license or privilege to enter or remain* in a building which is partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. [13A-7-1(3)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

[Insert instruction for crime alleged.]

An intruder acts *knowingly* if he/she is aware of the fact that he/she has no license or privilege to enter or remain. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of burglary in the second degree, then you shall find the defendant guilty of burglary in the second degree.

If you find that the State has failed to prove any one or more of the elements of burglary in the second degree, then you cannot find the defendant guilty of burglary in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

[Approved 04-15-16.]