

Ala. Code 1975, § 13A-7-5(a)(1)

Burglary First Degree
(Armed with Explosives)

The defendant is charged with burglary in the first degree.

A person commits the crime of burglary in the first degree if he/she knowingly and unlawfully enters or remains unlawfully in a dwelling with intent to commit a crime therein, and, if, in effecting entry or while in the dwelling or in immediate flight therefrom, the person or another participant in the crime is armed with explosives.

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

- (1) The defendant entered or remained unlawfully in a dwelling, the property of **[insert name]**, with intent to commit a crime therein, **[insert crime]**;
- (2) In effecting entry or while in the dwelling or in immediate flight therefrom, the defendant or another participant in the crime was armed with explosives;
(AND)
- (3) The defendant did so knowingly and unlawfully.

A person *enters or remains 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 or remains 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)]

Premises includes any building and any real property. [13A-7-1(5)]

A *building* is any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein. [13A-7-1(1)]

[Read as appropriate]: A *building* includes any railroad box car or other rail equipment or trailer or tractor trailer or combination thereof. [13A-7-1(1)]

[Read as appropriate]: Where a *building* consists of two or more units separately occupied or secure, each shall be deemed both a separate building and a part of the main building. [13A-7-1(1)]

[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)]

[Read as appropriate]: A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him/her by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner. [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)]

Explosives are any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such portions, quantities or packing that an ignition by fire, by friction, by concussion, by detonator or by chemical action of any part of the compound or mixture may cause a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. [13A-7-40(2)]

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 first degree, then you shall find the defendant guilty of burglary in the first degree.

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

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

[Approved 04-15-16.]