

Ala. Code 1975, § 13A-8-8
THEFT OF LOST PROPERTY SECOND DEGREE
(Delivered Under a Mistake - Value Between \$1500 & \$2500)

The defendant is charged with theft of lost property in the second degree.

A person commits the crime of theft of lost property in the second degree if he/she actively obtains or exerts control over the property of another, the value of which exceeds \$1500 but does not exceed \$2500, which he/she knows to have delivered under a mistake as to the identity of the recipient or as to the nature or the amount of the property, with intent to deprive the owner permanently of it, and he/she fails to take reasonable measures to discover and notify the owner.

To convict, the State must prove beyond a reasonable doubt each of the following elements of theft of lost property in the second degree:

- (1) The defendant actively obtained or exerted unauthorized control over the property, **[Insert description of property]**, of another, **[Insert name of owner]**;
- (2) The property exceeded \$1500 but did not exceed \$2500 in value;
- (3) The defendant knew the property was delivered under a mistake as to the identity of the recipient or as to the nature or the amount of the property;
- (4) The defendant failed to take reasonable measures to discover and notify the owner; **(AND)**
- (5) The defendant acted with intent to deprive the owner of his/her property permanently.

The term *obtains or exerts unauthorized control over property* includes, but is not necessarily limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to or interest in, or possession of, property. [13A-8-1(8)]

[Read as appropriate] The term includes, but is not necessarily limited to, conduct heretofore defined or known as common law larceny by trespassory taking, common law larceny by trick, larceny by conversion, embezzlement, extortion, or obtaining property by false pretenses [13A-8-1(8)]

Obtains means:

a. In relation to property, to bring about a transfer or purported transfer of a legally recognized interest in the property, whether to the obtainer or another;

(OR)

b. In relation to labor or service, to secure performance thereof.

[13A-8-1(7)]

Property is any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents, although the rights represented hereby have no physical location), contract right, chose-in-action, interest in a claim to wealth, credit, or any other article or thing of value of any kind. [13A-8-1(11)]

[Read as appropriate] Commodities of a public utility nature, such as gas, electricity, steam, and water, constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property. [13A-8-1(11)]

An *owner* is a person, other than the defendant, who has possession of or any other interest in the property involved, even though that interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property. [13A-8-1(9)]

[Read as appropriate] A secured party, as defined in Section 7-9A-102(a)(72), is not an owner in relation to a defendant who is a debtor, as defined in Section 7-9A-102(a)(28), in respect of property in which the secured party has a security interest, as defined in Section 7-1-201(37). [13A-8-1(9)]

Value is the market value of the property at the time and place of the criminal act. [13A-8-1(15)]

[Read as appropriate] Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value such as some public and corporate bonds and securities shall be evaluated as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

b. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

When the value of property cannot be ascertained pursuant to the standards set forth above, its value shall be deemed to be an amount not exceeding five hundred dollars (\$500). [13A-8-1(15)]

[Read as appropriate] Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense; provided, that only one conviction may be had and only one sentence enforced for all thefts included in such aggregate. [13A-8-1(15)]

Deprive means: **[Read as appropriate]**

a. To withhold property or cause it to be withheld from a person permanently or for such period or under such circumstances that all or a portion of its use or benefit would be lost to him or her;

b. To dispose of the property so as to make it unlikely that the owner would recover it;

c. To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return;

d. To sell, give, pledge, or otherwise transfer any interest in the property;

(OR)

e. To subject the property to the claim of a person other than the owner.

[13A-8-1(2)]

A person acts *knowingly* with respect to conduct or to a circumstance when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

A person acts with *intent* to deprive another of his/her property when he/she acts with the purpose of causing that result. [13A-2-2(1)]

[Read as appropriate] It is a defense to a prosecution for this offense that the defendant honestly believed that he/she had a claim to the property or services involved which he/she was entitled to assert in the manner which forms the basis of the charge against him/her. [13A-8-12(a)]

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

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

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

Use Note

The burden of injecting the above-stated defense to this offense is on the defendant, but this does not shift the burden of proof. [13A-8-12(b)] The jury should not be instructed that the defendant carries this burden.

[Approved 05-17-24]