

Ala. Code 1975, § 13A-9-51

Misapplication of Property

The defendant is charged with misapplication of property.

A person commits the crime of misapplication of property if, with knowledge that he/she is misapplying and that the misapplication involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, he/she misapplies or disposes of property that has been entrusted to him/her as a fiduciary or that is property of the government or a financial institution.

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

- (1) The Defendant misapplied or disposed of property that had been entrusted to him/her as a fiduciary or that was property of the government or a financial institution;
- (2) The Defendant did so with knowledge that he/she was misapplying; **(AND)**
- (3) The Defendant did so with knowledge that the misapplication involved substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted.

Misapply means to deal with the property contrary to law or government regulation of the custody or disposition of that property, "governmental regulation" includes administrative and judicial rules and orders as well as statutes and ordinances. [13A-9-51(c)]

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)]

Fiduciary includes a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary. [13A-9-51(b)]

Government includes the United States, any state or any county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any

state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. [13A-8-1(6)]

Financial Institution means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment. [13A-8-1(4)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [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 misapplication of property, then you shall find the defendant guilty of misapplication of property.

If you find that the State has failed to prove any one or more of the elements of misapplication of property, then you cannot find the defendant guilty of misapplication of property.

[Approved 02-27-17.]