

1 **14-1641. Embezzlement; essential elements.**

2 For you to find the defendant guilty of embezzlement [as charged in Count _____]¹,
3 the state must prove to your satisfaction beyond a reasonable doubt each of the following elements
4 of the crime:

5 1. The defendant was entrusted with _____². [This
6 _____ (*property*) had a market value³ [of \$ _____];⁴

7 2. The defendant converted this _____ (*property or money*) to the
8 defendant[']s own use. [“Converting something to one[']s own use” means keeping
9 another[']s property rather than returning it, or using another[']s property for one[']s own purpose
10 [rather than]⁵ [even though the property is eventually used] for the purpose authorized by the
11 owner;

12 3. At the time the defendant converted _____ (*property or money*),
13 the defendant fraudulently intended to deprive the owner of the owner[']s property.
14 [“Fraudulently intended” means intended to deceive or cheat;

15 4. This happened in New Mexico on or about the _____ day of
16 _____, _____.

17 USE NOTES

18 1. Insert the count number if more than one count is charged.

19 2. Describe property. If money is involved, state the amount.

20 3. See UJI 14-1602 NMRA for definition of [“market value”].

21 4. Use this bracketed provision for property other than money if the value is over
22 \$250. State whether the value alleged to have been embezzled or converted is [“over \$250,”]

1 [“over \$500,”] [“over \$2,500,”] or [“over \$20,000.”] If the charge is a petty
2 misdemeanor (\$250 or less), do not use this bracketed provision.

3 5. Use the applicable bracketed phrase.

4 [As amended, effective March 15, 1995; as amended by Supreme Court Order No. 10-8300-039,
5 effective December 31, 2010; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
6 effective for all cases pending or filed on or after December 31, 2025.]

7 **Committee commentary.** — See [Section 30-16-8 NMSA 1978]NMSA 1978, § 30-16-8.
8 Embezzlement, like larceny, is divided into degrees depending on the value of the property. See
9 generally LaFave & Scott, *Criminal Law* at 654 (1972). For the purpose of this crime, money has
10 its face value, and the state need not prove that its value is something else. *Territory v. Hale*, 1905-
11 NMSC-021, 13 N.M. 181, 81 P. 583[~~(1905)~~]. The same rule applies to checks. *State v. Peke*, 1962-
12 NMSC-033, 70 N.M. 108, 371 P.2d 226[~~(1962)~~].

13 In *State v. Moss*, 1971-NMCA-117, 83 N.M. 42, 487 P.2d 1347[~~(Ct. App. 1971)~~], the court held
14 that the term [“entrusted”] had an ordinary meaning and need not be defined in the instructions.
15 In *State v. Archie*, 1997-NMCA-058, ¶¶ 8-9, 123 N.M. 503, 943 P.2d 537, the court determined
16 the term [“use”] applies when a person having possession of another’s property treats it as
17 their own, whether the person uses it, sells it, or discards it; the details are less important than the
18 interference.

19 In contrast to the intent to permanently deprive in larceny, this crime requires only intent to deprive
20 the owner of ~~his~~their property, even temporarily. *Archie*, 1997-NMCA-058, ¶ 4; *State v.*
21 *Gonzales*, 1983-NMCA-041, ¶ 8, 99 N.M. 734,~~[735]~~ 663 P.2d 710[~~, 711 (Ct. App. 1983)~~]; *Moss*,
22 83 N.M. at 43, 487 P.2d at 1348] 1971-NMCA-117, ¶ 5; *State v. Prince*, 1948-NMSC-003, ¶ 12,
23 52 N.M. 15,~~[18]~~ 189 P.2d 993[~~, 995 (1948)~~]. [“Fraudulent intent”] is defined in this

1 instruction. *See State v. Green*, 1993-NMSC-056, ¶¶ 13-18 , 116 N.M. 273,[-278-79,] 861 P.2d
2 954[,-959-60-(1993)].

3 Following *State v. Brooks*, 1994-NMSC-062, 117 N.M. 751, 877 P.2d 557[-(1994)], the legislature
4 amended Section 30-16-8[-NMSA-1978] to exclude the single criminal intent doctrine (single
5 larceny doctrine) in embezzlement cases by adding the following language: [“]“Each separate
6 incident of embezzlement or conversion constitutes a separate and distinct offense.[”]” *See State*
7 *v. Faubion*, 1998-NMCA-095, ¶ 11, 125 N.M. 670, 964 P.2d 834; *State v. Rowell*, 1995-NMSC-
8 079, ¶ 20, 121 N.M. 111,[-418,] 908 P.2d 1379[,-1386-(1995)]. Prior to this legislative amendment,
9 the single larceny doctrine had allowed a series of takings of property or money from a single
10 victim to be treated as a single offense. *See Brooks*,[-417 N.M. at 752-53, 877 P.2d at 558-59] 1994-
11 NMSC-062, ¶ 3; *State v. Pedroncelli*, 1984-NMSC-009, 100 N.M. 678, 675 P.2d 127[-(1984)];
12 *State v. Allen*, 1955-NMSC-015, 59 N.M. 139, 280 P.2d 298[-(1955)].

13 [Commentary revised, June 24, 1999; amended by Supreme Court Order No. 10-8300-039[;
14 effective December 31, 2010]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]