

1 **14-5180. Defense of property.**¹

2 An issue in this case is whether the defendant acted while defending property.

3 The defendant acted in defense of property if

4 1. The _____² was property [of the defendant]³ [in the defendant's
5 lawful possession⁴];

6 2. It appeared to the defendant that _____ (*name of victim*) was about
7 to _____ (*describe act*) and that it was necessary to _____
8 (*describe defendant's action*) in order to stop _____ (*name of victim*);

9 3. The defendant used an amount of force that the defendant believed was reasonable
10 and necessary to defend the property;

11 4. A reasonable person in the same circumstances as the defendant would have acted
12 as the defendant did;

13 [5. The force used by the defendant would not ordinarily create a substantial risk of
14 death or great bodily harm.]⁵

15 The burden is on the state to prove beyond a reasonable doubt that the defendant did not
16 act in defense of _____². If you have a reasonable doubt as to whether the
17 defendant acted in defense of property, you must find the defendant not guilty.

18 USE NOTES

19 1. For use when defense is based on defense of property against either felony act or
20 nonfelony act. UJI 14-5170 NMRA is used for justifiable homicide; defense of habitation. UJI 14-
21 5171 NMRA (Justifiable homicide; self-defense) is used if unlawful interference with property is
22 accompanied by threat of death or great bodily harm. If this instruction is given, add to the essential
23 elements instruction for the offense charged, "The defendant did not act in defense of property."

1 2. Describe the property.

2 3. Use only the applicable bracketed language.

3 4. If there is a question of fact as to whether the defendant was in lawful possession
4 of the property, an appropriate instruction must be prepared.

5 5. Use bracketed material only if the defendant's action resulted in death or great
6 bodily harm. If the bracketed material is used, the definition of "great bodily harm," UJI 14-131
7 NMRA, must also be given if not already given.

8 [As amended, effective January 1, 1997; as amended by Supreme Court Order No. 18-8300-012,
9 effective for all cases pending or filed on or after December 31, 2018.]

10 **Committee commentary.** — In *State v. Couch*, 1946-NMSC-047, ¶ 31, 52 N.M. 127, 193 P.2d
11 405, the New Mexico Supreme Court recognized that “one cannot defend [their] property, other
12 than [his] [their] habitation, to the extent of killing an aggressor for the mere purpose of preventing
13 a trespass.” (Internal quotation marks and citation omitted.) *See also Brown v. Martinez*, 1961-
14 NMSC-040, ¶¶ 21-28, 68 N.M. 271, 361 P.2d 152. A person may use reasonable force to protect
15 the person’s property from unlawful interference by another, however, no force is reasonable if a
16 request to cease the unlawful interference would have been sufficient. *See* 2 Wayne R. LaFave, 2
17 ~~Subst. Crim. L. § 10.6(a), *Defense of property: Generally*~~, *Substantive Criminal Law* § 10.6(a) (2d
18 ed.[5] Oct. 2017 update).

19 A deadly force may be used in protection of a person’s real or personal property if the interference
20 with the property is accompanied by a deadly force. In such a case, a self-defense instruction must
21 be given.

22 This instruction adopts the Model Penal Code position which permits the use of force to protect
23 property in the defendant's lawful possession. *See* [~~*LaFave, supra*~~] *Id.*

- 1 [As amended by Supreme Court Order No. 18-8300-012~~], effective for all cases pending or filed~~
- 2 ~~on or after December 31, 2018~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]