§ 165.00 Misapplication of property.

1. A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that the same will be returned to the owner at a future time,

(a) he loans, leases, pledges, pawns or otherwise encumbers such property without the consent of the owner thereof in such manner as to create a risk that the owner will not be able to recover it or will suffer pecuniary loss; or

(b) he intentionally refuses to return personal property valued in excess of one hundred dollars to the owner pursuant to the terms of the rental agreement provided that the owner shall have made a written demand for the return of such personal property in person or by certified mail at an address indicated in the rental agreement and he intentionally refuses to return such personal property for a period of thirty days after such demand has been received or should reasonably have been received by him. Such written demand shall state: (i) the date and time at which the personal property was to have been returned under the rental agreement; (ii) that the owner does not consent to the continued withholding or retaining of such personal property and demands its return; and (iii) that the continued withholding or retaining of the property may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.

(c) as used in paragraph (b) of this subdivision and in subdivision three of this section, the terms owner, personal property, and rental agreement shall be defined as in subdivision one of section three hundred ninety-nine-w of the general business law.

2. In any prosecution under paragraph (a) of subdivision one of this section, it is a defense that, at the time the prosecution was commenced, (a) the defendant had recovered possession of the property, unencumbered as a result of the unlawful disposition, and (b) the owner had suffered no material economic loss as a result of the unlawful disposition.

3. In any prosecution under paragraph (b) of subdivision one of this

section, it is a defense that at the time the prosecution was commenced, (a) the owner had recovered possession of the personal property and suffered no material economic loss as a result of the unlawful retention; or (b) the defendant is unable to return such personal property because it has been accidentally destroyed or stolen; or (c) the owner failed to comply with the provisions of section three hundred ninety-nine-w of the general business law.

Misapplication of property is a class A misdemeanor.