

12.4(d) CRIMINAL MISCHIEF

§ 806.13(4), Fla. Stat.

To prove the crime of Criminal Mischief, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) intentionally damaged [a residential dwelling] [commercial real property] belonging to (person alleged).**
- 2. (Defendant) did so while [he] [she] unlawfully [occupied] [trespassed upon] [or] [detained] the [residential dwelling] [commercial real property].**
- 3. The damage was \$1,000 or more.**

Give as applicable.

§ 810.011(2), Fla. Stat. *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

“Residential dwelling” means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of Criminal Mischief, a “dwelling” includes an attached porch or attached garage.

As of August 2025, there was no statutory definition of “commercial real property.”

“Commercial real property” means real property used for business purposes. “Real property” means land, buildings, fixtures, and all other improvements to land. “Improvements” mean any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

Give only if applicable.

Among the means by which property can be damaged under Florida law is the placement of graffiti on it or other acts of vandalism to it.

§ 810.08, Fla. Stat.

“Trespass” means that a person, without being authorized, licensed, or invited, willfully enters or remains in any structure [or conveyance], or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so

§ 82.01, Fla. Stat.

To “unlawfully detain” [a residential dwelling] [commercial real property] means to possess the [dwelling] [commercial real property], even if the

possession is temporary or applies only to a portion of the property, without the consent of a person entitled to possession of the property or after the withdrawal of consent by such person.

Lesser Included Offenses

CRIMINAL MISCHIEF — 806.13(4)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Trespass in a Structure (or Conveyance)		810.08	13.3
	Criminal Mischief*	806.13(1)-(2)	12.4
	Attempt	777.04(1)	5.1

Comments

*For § 806.13(1)-(2), Fla. Stat., to be a lesser included crime, the charging document would need to allege the defendant's damage was done not just intentionally, but also willfully and maliciously.

This instruction was adopted on February 21, 2025, and amended on September 12, 2025.