

**1485 FRAUDULENT WRITINGS: FALSIFYING A CORPORATE RECORD
— § 943.39(1)**

Statutory Definition of the Crime

Subsection 943.39(1) of the Wisconsin Criminal Code is violated by (a director) (an officer) (a manager) (an agent) (an employee) of a (corporation) (limited liability company) who, with intent to injure or defraud, CHOOSE ONE OF THE FOLLOWING¹

[falsifies a (record) (account) (document) belonging to the (corporation) (limited liability company) by (alteration) (false entry) (omission).]

[(makes) (circulates) (publishes) a written statement regarding the (corporation) (limited liability company) which the defendant knew was false].

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was (a director) (an officer) (a manager) (an agent) (an employee) of a (corporation) (limited liability company).²
2. The defendant CHOOSE ONE OF THE FOLLOWING:

[falsified any (record) (account) (document) belonging to the (corporation) (limited liability company). An item may be falsified by altering it, by making a false entry on it, or by omitting something that should be included.]

[(made) (circulated) (published) a written statement regarding the (corporation) (limited liability company) which the defendant knew was false].

3. The defendant acted with intent to (injure) (defraud).³

["Intent to injure" means that the defendant intended to cause harm of any kind.]

["Intent to defraud" means that the defendant intended to obtain property that (he) (she) was not entitled to receive.]⁴

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1485 was originally published in 2001. This revision updated footnote 3 and was approved by the Committee in October 2003.

This instruction is drafted for violations of sub. (1) of § 943.39. For violations of sub. (2) of that statute, see Wis JI-Criminal 1486, Fraudulent Writings: Obtaining A Signature By Means of Deceit. There is no uniform instruction for violations of § 943.39(3), which prohibits making a false written statement with knowledge that it is false and with intent that it shall ultimately appear to have been signed under oath.

1. One of the two alternatives in brackets should be selected. They state the two different ways of violating § 943.39(1).

2. One of the two alternatives in brackets should be selected. They paraphrase the two different ways of violating § 943.39(1).

3. The offense is defined as engaging in one of the prohibited acts "with intent to injure or defraud." The instruction puts the alternative intents in parentheses on the assumption that one or the other is likely to be supported by the evidence. However, the Committee concluded that it would be permissible to instruct on both types of intent, if supported by the evidence, and that jury agreement on the intent involved would not be required. In State v. Norman, 2003 WI 72, 262 Wis.2d 506, 664 N.W.2d 97, the Wisconsin Supreme Court noted that the Committee's conclusion does not "provide persuasive authority" on the jury agreement issue because it did not reflect a complete analysis. Id., at footnote 51. The proper method for a complete analysis is set forth in Norman at ¶¶ 59-64. Also see Wis JI-Criminal 517, Jury Agreement . . . , which collects the Wisconsin appellate decisions which have addressed the issue under specific statutes.

4. The definition of "intent to defraud" is based on the one used in Wis JI-Criminal 1491, Forgery (By Making Or Altering A Check). See footnote 5 in that instruction, indicating that intent to defraud is "a term whose meaning varies according to the context in which it is used."