

### **CR521 Defense of Habitation.**

You must decide whether the defense of Defense of Habitation applies in this case.

Under that defense, the defendant is justified in using force against another when and to the extent the defendant reasonably believes that force is necessary to:

1. Prevent the other person's unlawful entry into the habitation; or
2. Terminate the other person's unlawful entry into the habitation; or
3. Prevent the other person's attack upon the habitation; or
4. Terminate the other person's attack upon the habitation.

The defendant is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

1. The other person's entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and the defendant reasonably believes:
  - a. That the other person's entry is attempted or made for the purpose of assaulting or threatening personal violence to any person, dwelling, or being in the habitation; and
  - b. That the force is necessary to prevent an assault or threat of personal violence; or
2. The defendant reasonably believes
  - a. That the other person's entry is made or attempted for the purpose of committing a felony in the habitation; and
  - b. That the force is necessary to prevent the commission of the felony.

### **References:**

Utah Code § 76-2-405

State v. Karr, 364 P.3d 49 (Utah App. 2015)

State v. Walker, 391 P.3d 380 (Utah App. 2017)

State v. Mitcheson, 560 P.2d 1120 (Utah 1977)

State v. Moritzsky, 771 P.2d 688 (Utah App. 1989)

State v. Patrick, 217 P.3d 1150 (Utah App. 2009)

### **Committee Note:**

This instruction should be used with CR520, CR522, CR523, and CR510.

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