

N.C.P.I.-Crim. 220.31
[RECEIVING] [ATTEMPTING TO RECEIVE] PROCEEDS FROM RESIDENTIAL
MORTGAGE FRAUD. FELONY.
GENERAL CRIMINAL VOLUME
JUNE 2008
N.C. Gen. Stat. § 14-118.12(a)(3)

220.31 [RECEIVING] [ATTEMPTING TO RECEIVE] PROCEEDS FROM
RESIDENTIAL MORTGAGE FRAUD. FELONY.

The defendant has been charged with [receiving] [attempting to receive] [proceeds] [describe other funds] from residential mortgage fraud.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant acted for financial gain.

Second, that the defendant acted with the intent to [defraud] [deceive].¹

Third, that the defendant [received] [attempted to receive] [[loan proceeds] [*describe other funds*]] in connection with a residential mortgage closing.

And Fourth, that the defendant [knew] [should have known] the [proceeds] [*describe other funds*] were a result of residential mortgage fraud. Residential mortgage fraud occurs when a person, acting for financial gain and with the intent to [deceive] [defraud], knowingly

[(a) [makes] [attempts to make] any material² [misstatement] [misrepresentation] within the mortgage lending process].

[(b) omits material information within the mortgage lending process].

[(c) [uses] [facilitates the use of] [attempts to use] [attempts to facilitate the use of] any material [misstatement] [misrepresentation]

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[omission] within the mortgage lending process].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant, acting for financial gain and intending to [defraud] [deceive], [received] [attempted to receive] [[loan proceeds] [*describe other funds*]] in connection with a residential mortgage closing and the defendant [knew] [should have known] the [proceeds] [any other funds] were a result of mortgage fraud, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. N.C. Gen. Stat. § 14-118.12(b) states "it shall be sufficient in any prosecution under this Article for residential mortgage fraud to show that the party accused did the act with the intent to deceive or defraud. It shall be unnecessary to show that any particular person or entity was harmed financially in the transaction or that the person or entity to whom the deliberate misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation or omission."

2. "A fact is material 'if the fact...if it had been known to the party, would have influenced [its] judgment or decision in making the contract at all.'" *Godfrey v. Res-Care, Inc.*, 165 N.C. App. 68, 75, 598 S.E.2d 396, 402 (2004) (quoting *Machine Co. v. Bullock*, 161 N.C. 1, 7, 76 S.E. 634, 636 (1912)).