

220.32 CONSPIRACY TO COMMIT RESIDENTIAL MORTGAGE FRAUD.
FELONY.

The defendant has been charged with feloniously conspiring to commit residential mortgage fraud.

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

First, that the defendant and (name other person or persons)¹ entered into an agreement.

Second, that the agreement was to commit 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]³ with intent that a [mortgage lender] [mortgage broker] [borrower] [any other person] involved in the mortgage lending process rely on it.

[(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] [omission] within the mortgage lending process] with intent that a [mortgage lender] [mortgage broker] [borrower] [any other person] involved in the mortgage lending process rely on it.

[(d) [[receives] [attempts to receive]] [[loan proceeds] [*describe other funds*]] in connection with a residential mortgage closing that

the person [knew] [should have known] resulted from [making] [attempting to make] [using] [facilitating the use of] [attempting to use] [attempting to facilitate the use of] any material [misstatement] [misrepresentation] [omission] within the mortgage lending process with intent that a [mortgage lender] [mortgage broker] [borrower] [any other person] involved in the mortgage lending process rely on it.]

And Third, that the defendant and (*name other person or persons*) intended that the agreement be carried out at the time it was made.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant agreed with (*name other person or persons*) to commit residential mortgage fraud, and the defendant and (*name person(s)*) intended at the time the agreement was made that it would be carried out, 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. If one or more co-conspirators are named in the indictment state their names. The jury must find that the defendant entered into an agreement with at least one of the named persons. *S. v. Minter*, 111 N.C. App. 40 (1993), *cert. denied*, 335 N.C. 241 (1993). *See also, S. v. Mickey*, 207 N.C. 608 (1935).

2. "A fact is material . . . 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)).

3. For a definition of "mortgage lending process" see N.C. Gen. Stat. § 14-118.11(a) (2).