

220.33 SOLICITATION OF RESIDENTIAL MORTGAGE FRAUD. FELONY.

The defendant has been charged with soliciting another to commit residential mortgage fraud.

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

First, that the defendant [enticed] [advised] [incited] [ordered] [commanded] (*name solicitee*) to commit residential mortgage fraud.

And Second, that the defendant specifically intended that (*name solicitee*) 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 material¹ [misstatement] [misrepresentation] within the mortgage lending process]² 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.]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant [enticed] [advised] [incited] [ordered] [commanded] (*name solicitee*) to commit residential mortgage fraud, specifically intending that (*name solicitee*) commit residential 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 both of these things, it would be your duty to return a verdict of not guilty.

1. "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)).

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