

220.34 PATTERN OF RESIDENTIAL MORTGAGE FRAUD. FELONY.

The defendant has been charged with a pattern of residential mortgage fraud.

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

First, that the defendant with the intent that a [mortgage lender] [mortgage broker] [borrower] [any other person or entity that is involved in the mortgage lending process (*describe person or entity*)] rely on the [misstatement] [misrepresentation] [omission]¹ knowingly

[(a) [made] [attempted to make] any material² [misstatement] [misrepresentation] within the mortgage lending process³].

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

[(c) [used] [facilitated the use of] [attempted to use] [attempted to facilitate the use of] any material [misstatement] [misrepresentation] [omission] within the mortgage lending process].

Second, that the residential mortgage fraud involved five (or more) mortgage loans. A mortgage loan is a loan primarily secured by either (i) a mortgage or a deed of trust on residential real property or (ii) a security interest in a manufactured home located or to be located on residential real property. The mortgage loans involved were: (*Describe each mortgage loan involved, e.g., lender name, borrower name, loan amount, loan number, date of transaction, etc.*)

Third, that the mortgage loans were interrelated to each other by the same or similar [intent] [result] [accomplice] [victim] (or) [method of commission] (or) [by other distinguishing characteristics (*describe other characteristics*)]. In other words, the mortgage loans involved were related and had continuity.

Fourth, that the defendant acted with the intent to [deceive] [defraud].⁴

And Fifth, that the defendant acted for financial gain.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant with the intent that a [mortgage lender] [mortgage broker] [borrower] [any other person or entity that is involved in the mortgage lending process (*describe person or entity*)] rely on the [misstatement] [misrepresentation] [omission] knowingly

[(a) [made] [attempted to make] any material [misstatement] [misrepresentation] within the mortgage lending process],

[(b) omitted material information within the mortgage lending process],

[(c) [used] [facilitated the use of] [attempted to use] [attempted to facilitate the use of] any material [misstatement] [misrepresentation] [omission] within the mortgage lending process],

and that the residential mortgage fraud involved five (or more) mortgage loans interrelated to each other by the same or similar [intent] [result] [accomplice] [victim] (or) [method of commission] (or) [by other distinguishing characteristics (*describe other characteristics*)], 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. A pattern of residential mortgage fraud can also consist of a pattern of receiving funds from residential mortgage fraud, conspiracy to commit residential mortgage fraud, or soliciting residential mortgage fraud. N.C. Gen. Stat. § 14-118.12(a)(3-4).

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)).

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

4. 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."