

259.22 UNAUTHORIZED PRACTICE OF LAW - FORECLOSURE FEES.
MISDEMEANOR.

The defendant has been charged with the unauthorized practice of law by [exacting] [charging] [receiving] an attorney fee for conducting a foreclosure of a mortgage¹ (deed of trust)² under a power of sale.³

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

First, that the defendant was not licensed to practice law in North Carolina;

Second, that the defendant [exacted] [charged] [received] any attorney fee for the foreclosure of any mortgage (deed of trust) under power of sale;

And Third, that the defendant charged an attorney fee that was not [[paid] [received] [retained] by an attorney licensed to practice law in North Carolina]] [[shared [directly] [indirectly] with a person who was not licensed to practice law in North Carolina]].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was not licensed to practice law in North Carolina, that the defendant [exacted] [charged] [received] any attorney fee for the foreclosure of any mortgage (deed of trust) under power of sale, and that the defendant charged an attorneyfee that was not [[paid] [received] [retained] by an attorney licensed to practice law in North Carolina]] [[shared [directly] [indirectly] with a person who was not licensed to practice law in North Carolina]], 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, then it would be your duty to

return a verdict of not guilty.

1. According to the American Law Institute's Comments & Illustrations of the Restatement 3rd of Property, "The function of a mortgage is to employ an interest in real estate as security for the performance of some obligation. The principles of this Restatement apply irrespective of the precise form of the mortgage. It may, for example, be styled a deed of trust or a deed to secure debt." Restat 3d of Property: Mortgages, § 1.1. Presumably, this statute would apply where a deed of trust, the prevailing vehicle for such transactions in North Carolina, is involved.

2. Because North Carolina is a "Title Theory" state, "mortgages normally take the form of *deeds of trust*. Under a *deed of trust*, the borrower (called the *grantor*) conveys legal title to the real property to a third party (called the *trustee*) to hold for the benefit of the lender (called the *beneficiary*) until the loan is repaid." 2-13 Webster's Real Estate Law in North Carolina § 13.02, The Nature of Mortgages and Deeds of Trust.

3. N.C. Gen. Stat. § 84-6 also provides that "it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same, or to share with or rebate to any other person, firm, or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney-at-law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted, and has forwarded the case to the attorney conducting such foreclosure."